

No. 12973

United States
Court of Appeals
for the Ninth Circuit.

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States.

FILED
AUG 17 1935
U.S. DEPT. OF JUSTICE
RECORDS SECTION

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner :

SCOTT Z. HENDERSON, ESQ.,

GEORGE J. BUSCH, C.P.A.,

HENRY C. PERKINS, ESQ.

For Respondent :

JOHN D. PICCO, ESQ.

In the Tax Court of the United States

Docket No. 26127

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

Dec. 12—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 14—Copy of petition served on General Counsel.

Dec. 27—Request for hearing Tacoma or Seattle, Washington filed by taxpayer. Granted 12/28/49.

1950

Feb. 8—Answer filed by respondent.

Feb. 13—Copy of answer served on Taxpayer. Seattle, Washington.

May 3—Hearing set July 3, 1950, Seattle.

June 19—Notice changing hearing to July 5, 1950, in Seattle, Washington, filed.

July 5—Hearing had before Judge Johnson on merits. Record to be held open pending receipt of deposition of E. E. Searles on behalf of petitioner to be taken the week of July 17, 1950. Stipulation of facts with exhibits 1 through 5, and appearance of Henry C. Perkins. Brief, Sept. 5, 1950. Replies October 5, 1950.

1950

- Aug. 2—Stipulation to take deposition of Eldon E. Searles filed.
- Aug. 10—Transcript of Hearing 7/5/50 filed.
- Aug. 31—Motion for extension to Oct. 5, 1950, to file original brief and Nov. 5, 1950, to file reply brief filed by taxpayer—granted 9/1/50.
- Sept. 19—Deposition of Eldon E. Searles filed. Copies served by notary.
- Oct. 4—Motion for extension to Oct. 20, 1950, to file original brief and Nov. 20, 1950, to file reply brief filed by taxpayer—granted 10/4/50.
- Oct. 5—Brief filed by General Counsel.
- Oct. 12—Brief filed by taxpayer. Copy served.
- Nov. 16—Reply brief filed by taxpayer. Copy served.

1951

- Feb. 16—Findings of Fact and Opinion rendered. Johnson J. Decision will be entered for respondent. Copy served.
- Feb. 19—Decision entered. Johnson J. Div. 10.
- May 9—Petition for Review by U. S. Court of Appeals for the Ninth Circuit and notice of filing same filed by taxpayer.
- May 9—Designation of contents of record on review filed by taxpayer.
- May 11—Proof of Service to Petition for Review and Designation of Record filed.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Seattle Division IT:90D:EEH), dated September 23, 1949, and as a basis of its proceeding alleges as follows:

1. The petitioner is and at all times mentioned was a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business at Tacoma, Washington. The return for the period here involved was filed with the Collector for the District of Washington and Alaska.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A), was mailed to the petitioner September 23, 1949.

3. The taxes in controversy are:

(a) Income tax for the calendar year of 1944, amounting to an overassessment of Six Hundred Twelve and 29/100 (\$612.29) Dollars, the petitioner claiming the overassessment is approximately Three Hundred Seventy-five (\$375.00) Dollars.

(b) Excess profits tax for the calendar year of 1944, amounting to a deficiency of Twenty Thousand Five Hundred Thirty-seven and 77/100 (\$20,537.77) Dollars, the petitioner claiming an over-payment of approximately Ten Thousand (\$10,000.00) Dollars.

(c) Income tax for the calendar year of 1945,

amounting to an overassessment of Five Hundred Eighty-six and 13/100 (\$586.13) Dollars, the petitioner claiming an overassessment of approximately Eighty-five (\$85.00) Dollars.

(d) Excess profits tax for the calendar year of 1945, amounting to a deficiency of Twenty-two Thousand Two Hundred Twenty and 52/100 (\$22,220.52) Dollars, the petitioner claiming an overpayment of approximately Six Hundred Seventy (\$670.00) Dollars.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

- (a) Unallowable rentals, t a x a b l e
year ended December 31, 1944
(Item a, Page 2, Exhibit A) . . . \$36,684.92
- (b) Unallowable rentals, t a x a b l e
year ended December 31, 1945
(Item a, Page 4, Exhibit A) . . . 24,633.16

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner is engaged in business as a marine terminal and warehouse, and during the late war handled a large amount of freight passing through the Port of Tacoma, Washington.

(b) Prior to September 30, 1943, petitioner rented lift trucks from the United States Army and other stevedoring companies at rates established by published tariffs applicable to all docks in the Port of Tacoma.

(c) As of September 30, 1943, petitioner began renting lift trucks from Equipment Associates, a

partnership organized by oral agreement on September 22, 1943, and evidenced by written agreement dated October 8, 1943. Petitioner continued to rent lift trucks from said partnership during the years 1944 and 1945 at rates established by the same published tariffs.

(d) During the years 1944 and 1945, the partners of Equipment Associates were as follows, each having a one-third interest:

S. B. Stocking

K. M. Kennell

W. Hopkins

and these three were also the sole shareholders of petitioner, the percentage interest being as follows:

S. B. Stocking.....78.5%

K. M. Kennell.....13 %

W. Hopkins..... 8.5%

(e) Equipment Associates was always managed as a separate business and complete books of account were always maintained. The only connection between petitioner and the partnership was as above stated and the relation of lessor and lessee of equipment.

(f) The capital invested in Equipment Associates came from the partners and borrowing on the personal credit of the partners and nothing invested in the partnership came from petitioner.

6. As hereinabove fully set forth, the Commissioner has therefore erred as follows:

(a) (4-(A)) In the disallowance of the deduction of rental paid by the petitioner to the Equip-

ment Associates of Thirty-six Thousand Six Hundred Eighty-four and 92/100 (\$36,684.92) Dollars in the taxable year ending December 31, 1944.

(b) (4-(B)) In the disallowance of the deduction of rental for trucks paid by the petitioner to the Equipment Associates of Twenty Four Thousand Six Hundred Thirty-three and 16/100 (\$24,633.16) Dollars in the taxable year ending December 31, 1945.

Wherefore, the petitioner prays that:

1. This Court may hear the proceeding and adjudge that there is no deficiency as contended for by the respondent, and that the deductions for rental paid to the Equipment Associates may be allowed.

SHAFFER TERMINALS, INC.

By /s/ S. B. STOCKING,
President, Petitioner.

/s/ SCOTT Z. HENDERSON,
Attorney for Petitioner.

/s/ GEO. J. BUSCH,
C. P. A.

State of Washington,
County of Pierce—ss.

S. B. Stocking, being first duly sworn, says that he is president of Shaffer Terminals, Inc., a corporation, the petitioner above named, and that he is authorized to verify said petition in behalf of said corporation; that he has read the foregoing petition and is familiar with the statements contained

therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ S. B. STOCKING.

Subscribed and sworn to before me this 8th day of December, 1949.

[Seal] /s/ CLARA J. CAMBY,
Notary Public in and for the State of Washington,
Residing at Tacoma.

EXHIBIT "A"

Treasury Department
Internal Revenue Service
Securities Building
Seattle, Washington

September 23, 1949

Office of
Internal Revenue Agent
in Charge, Seattle
Division
IT:90D:EEH

Shaffer Terminals, Inc.
PO Box 1157
Tacoma, Washington

Gentlemen:

You are advised that the determination of your income and excess profits tax liability for the taxable years ended December 31, 1944, and December 31, 1945, discloses a deficiency of \$42,758.29 in excess

profits tax and an overassessment of \$1,198.42 in income tax, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:EEH. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By S. R. STOCKTON,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form 874

Forms 843 (2) in dup.

EEH:mtr

IT:90D:EEH

STATEMENT

Shaffer Terminals, Inc.

P.O. Box 1157

Tacoma, Washington

Tax Liability for the Taxable Years Ended December 31, 1944, and
December 31, 1945

Income Tax

Year	Liability	Assessed	Overassessment	Deficiency
1944	\$ 4,334.15	\$ 4,946.44	\$ 612.29	
1945	3,406.59	3,992.72	586.13	
Totals.....	\$ 7,740.74	\$ 8,939.16	\$1,198.42	

Excess Profits Tax

1944	\$40,777.32	\$20,239.55	\$20,537.77
1945	33,465.12	11,244.60	22,220.52
Totals.....	\$74,242.44	\$31,484.15	\$42,758.29

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated August 26, 1947; to your protests dated December 17, 1947; to the statements made at the conferences held on March 30, 1948; September 28, 1948, and February 15, 1949; and to your claim for refund filed on August 22, 1947.

In your income and excess profits tax returns for the years 1944 and 1945 and your income tax return for the year 1946, you have deducted rental paid to your officers and stockholders operating as a partnership under the name of Equipment Associates for lift trucks purchased by you and subsequently transferred to the partnership, in the respective amounts of \$41,134.82, \$29,434.46 and \$11,782.32. You have not established that the above rentals are proper deductions from income. There has therefore been added to your net income of the respective years, the excess of receipts over expenses of the claimed partnership exclusive of compensation paid to S. B. Stocking, your principal stockholder.

During the year 1945, you accrued and deducted on your returns for that year tentative back pay accrual of \$7,024.63 and tentative vacation pay accrual of \$1,081.65. Inasmuch as you were protesting the said increased expenses and no decision thereon was reached until the year 1946, the above accruals are held to be unallowable deductions of the year 1945. The properly determined amount of \$8,207.22, covering back pay and vacation pay, has been allowed as a deduction from your 1946 income.

If a petition to The Tax Court of the United States is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If a petition

is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with Section 3772 of the Internal Revenue Code.

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 322 (a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the collector of internal revenue for your district, a claim for refund on Form 843, copies of which are enclosed, the basis of which may be as set forth herein.

A copy of this letter and statement has been mailed to your representative, Mr. Geo. J. Busch, 1014 Puget Sound Bank Building, Tacoma 2, Washington, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1944
Adjustments to Net Income

Net income disclosed by return, Form 1120.....		\$42,362.49
Unallowable deductions and additional income:		
(a) Unallowable rentals	\$36,684.92	
(b) Capital stock tax	187.50	36,872.42
		<hr/>
Total		\$79,234.91
Nontaxable income and additional deductions:		
(c) Contributions	\$ 140.39	
(d) Net operating loss deduction	14,978.99	15,119.38
		<hr/>
Net income adjusted.....		\$64,115.53

Explanation of Adjustments

(a) As explained above, there is added to net income the excess of receipts over expenses of the claimed partnership operated under the name "Equipment Associates." Such excess has been determined to amount to \$36,684.92, and net income is increased by the amount shown.

(b) On the return a deduction of \$1,125.00 was claimed for capital stock tax. It is held that such deduction is allowable in the amount of \$937.50 and net income is increased by the difference of \$187.50 in the amounts shown.

(c) A deduction of \$2,229.61 for contributions was claimed on the return. Since contributions are allowable as a deduction in the amount of \$2,370.00, net income is reduced by the difference of \$140.39 in the amounts shown.

(d) Net income is reduced \$14,978.99, representing the amount of the allowable net operating loss deduction which was not claimed on the return. Such deduction is based on the net operating loss carry back from the taxable year 1946, which has been determined to amount to \$14,978.99.

Computation of Income Tax

Net income adjusted.....	\$64,115.53
Less: Income subject to excess profits tax.....	47,692.77
Normal tax and surtax net income.....	\$16,422.76
Normal tax: \$ 5,000.00 at 15%.....	\$ 750.00
11,422.76 at 17%.....	1,941.87
Total normal tax.....	2,691.87
Surtax: \$16,422.76 at 10%.....	1,642.28
Income tax liability.....	\$ 4,334.15
Income tax previously assessed Account No. 4100435.....	4,946.44
Overassessment of income tax.....	\$ 612.29

Adjustments to Excess Profits Net Income

Excess profits net income as disclosed by return, Form 1121....	\$43,240.03
Additions:	
(a) Unallowable rentals	\$36,684.92
(b) Capital stock tax	187.50
36,872.42	
Total	\$80,112.45
Deductions:	
(c) Contributions	\$ 140.39
(d) Net operating loss deduction.....	14,978.99
15,119.38	
Excess profits net income corrected.....	\$64,993.07

Explanation of Adjustments

(a), (b), (c) and (d)—The excess profits net income reported on the return is adjusted by the amount of the adjustments to the net income reported on the return, Form 1120, as explained above.

Computation of Excess Profits Tax

Excess profits net income corrected.....	\$64,993.07
Less: Specific exemption	\$10,000.00
Excess profits credit as determined.....	5,421.36
Unused excess profits credit	
as determined	1,878.94
17,300.30	
Adjusted excess profits net income.....	\$47,692.77
95% or \$47,692.77.....	45,308.13
Less: 10% credit.....	4,530.81
Excess profits tax liability.....	\$40,777.32
Previously assessed Account No. 4000140.....	\$22,488.39
Less: 10% credit, Sec. 784, I.R.C.	2,248.84
20,239.55	
Deficiency in excess profits tax.....	\$20,537.77

Shaffer Terminals, Inc., vs.

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return, Form 1120.....		\$28,309.81
Unallowable deductions and additional income:		
(a) Unallowable rentals	\$24,633.16	
(b) Contingent reserve	8,106.28	
(c) Capital stock tax	937.50	33,676.94
		<hr/>
Total		\$61,986.75
Nontaxable income and additional deductions		
(d) Contributions	\$ 320.01	
(e) Net operating loss deduction.....	9,538.88	9,858.89
		<hr/>
Net income adjusted.....		\$52,127.86

Explanation of Adjustments

(a) As explained above, there is added to net income the excess of receipts over expenses of the claimed partnership operated under the name "Equipment Associates." Such excess has been determined to amount to \$24,633.16, and net income is increased by the amount shown.

(b) As explained above, it is held that tentative back pay accrual of \$7,024.63 and tentative vacation pay accrual of \$1,081.65 claimed as a deduction on the return in the total amount of \$8,106.28 is unallowable as a deduction for the taxable year, and net income is increased accordingly.

(c) It is held that capital stock tax claimed as a deduction on the return in the amount of \$937.50 is unallowable as a deduction for the taxable year, and net income is increased by the amount shown.

(d) It is held that a deduction for contributions is allowable in the amount of \$1,810.00. Since such deduction was claimed on the return in the amount of \$1,489.99, net income is reduced by the difference of \$320.01 in the amounts shown.

(e) Net income is reduced \$9,538.88, representing the amount of the allowable net operating loss deduction which was not claimed on the return. Such deduction is based on the net operating loss carry back from the taxable year 1947, which has been determined to amount to \$9,538.88.

Computation of Income Tax

Net income adjusted	\$52,127.86
Less: Income subject to excess profits tax.....	39,140.49
	<hr/>
Normal tax and surtax net income.....	\$12,987.37
Normal tax: \$5,000.00 at 15%.....	\$ 750.00
7,987.37 at 17%.....	1,357.85
	<hr/>
Total normal tax.....	\$ 2,107.85
Surtax: \$12,987.37 at 10%.....	1,298.74
	<hr/>
Income tax liability	\$ 3,406.59
Income tax previously assessed, Account No. 4101110.....	3,992.72
	<hr/>
Overassessment of income tax.....	\$ 586.13

Adjustments to Excess Profits Net Income

Excess profits net income as disclosed by return, Form 1121....	\$28,908.69	
Additions:		
(a) Unallowable rentals	\$24,633.16	
(b) Contingent reserve	8,106.28	
(c) Capital stock tax	937.50	33,676.94
		<hr/>
Total		\$62,585.63
Deductions:		
(d) Contributions	\$ 320.01	
(e) Net operating loss deduction.....	9,538.88	9,858.89
		<hr/>
Excess profits net income corrected.....		\$52,726.74

Explanation of Adjustments

(a), (b), (c), (d) and (e)—The excess profits net income reported on the return, Form 1121, is adjusted by the amount of the adjustments to the net income reported on the return, Form 1120, as explained above.

Computation of Excess Profits Tax

Excess profits net income corrected.....	\$52,726.74	
Less: Specific exemption	\$10,000.00	
Excess profits credit as determined.....	3,586.25	13,586.25
		<hr/>
Adjusted excess profits net income.....		\$39,140.49
95% of \$39,140.49.....		\$37,183.47
Less: 10% credit.....		3,718.35
		<hr/>
Excess profits tax liability.....		\$33,465.12
Previously assessed, Account No. 4000340.....		11,244.60
		<hr/>
Deficiency in excess profits tax.....		\$22,220.52

Received and Filed T.C.U.S. December 12, 1949.

Served December 14, 1949.

[Title of Tax Court and Cause.]

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges, and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3(A). Denies the allegations contained in subparagraph (A) of paragraph 3 of the petition. Alleges that the overassessment in income tax for 1944 is not in controversy before the Court in this proceeding.

(B). Admits that the tax in controversy for the calendar year 1944 is excess profits tax in the amount of \$20,537.77. Denies the remaining allegations contained in subparagraph (B) of paragraph 3 of the petition.

(C). Denies the allegations contained in subparagraph (C) of paragraph 3 of the petition. Alleges that the overassessment in income tax for 1945 is not in controversy before the Court in this proceeding.

(D). Admits that the tax in controversy for the calendar year 1945 is excess profits tax in the amount of \$22,220.52. Denies the remaining allegations con-

tained in subparagraph (D) of paragraph 3 of the petition.

4(A) & (B). Denies that the respondent committed error in determining the deficiencies as shown in the statutory notice, and specifically denies that the respondent erred as alleged in subparagraphs (A) and (B) of paragraph 4 of the petition.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c). Admits that Equipment Associates was organized in 1943. Denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d). Admits the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e). Admits that Equipment Associates maintained separate books of account. Denies the remaining allegations of subparagraph (e) of paragraph 5 of the petition.

(f). Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

6(a) & (b). Denies the allegations contained in subparagraphs (a) and (b) of paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination be approved.

/s/ CHARLES OLIPHANT, DLB,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,
Division Counsel.

DOUGLAS L. BARNES,
W. E. KOKEN,
Special Attorneys,
Bureau of Internal Revenue.

Received and filed T.C.U.S. February 8, 1950.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys of record that the following facts are true and that the same may be so considered and accepted by the Court as offered in evidence by the parties to this proceeding: Provided, however, that the stipulation shall be without prejudice to the right of either of said parties to introduce other and further evidence not inconsistent with the facts herein stipulated:

1. The tax years in issue are the years ending December 31, 1944, and December 31, 1945.

2. Petitioner is a Washington corporation, having been organized under the laws of that state on April 16, 1921. At all times material to this proceeding, petitioner was engaged in the business of operating warehouse terminals and storage. Its office and principal place of business is at Tacoma, Washington. It keeps its books and files its returns on the accrual basis. Its returns for the taxable years ended December 31 of 1944, 1945 and 1946, were made to the Collector of Internal Revenue at Tacoma, Washington.

3. On January 1, 1943, the outstanding capital stock of petitioner was owned by the following persons as below indicated:

Shareholder	Shares
R. H. Shaffer.....	108
Samuel B. Stocking.....	72
K. M. Kennell.....	12
W. Hopkins.....	8
<hr/>	
Total	200

On October 20, 1943, R. H. Shaffer died. His shares of stock in petitioner were acquired by the surviving shareholders. On December 31, 1943, the capital stock of petitioner was held as follows:

Shareholder	Shares	Per Cent of Ownership
Samuel B. Stocking.....	157	78.5
K. M. Kennell.....	26	13
W. Hopkins.....	17	8.5
<hr/>		<hr/>
	200	100

4. During the period here involved and after the death of R. H. Shaffer, the sole officers of petitioner who were also its sole stockholders as indicated in paragraph 3 above, were as follows:

Samuel B. Stocking, President.

K. M. Kennell, Vice President-Secretary.

W. Hopkins, Treasurer.

5. On September 22, 1943, a partnership was organized by the individuals named in paragraph 3 under the style of Equipment Associates. Subsequent to the death of R. H. Shaffer on October 20, 1943, decedent's interest was acquired equally by the surviving partners and the business was continued as a partnership under the same name. The partners divided the profits of the partnership equally. Attached hereto and made a part hereof as Exhibit 1 is a true and correct copy of the agreement of said partnership dated October 8, 1943, evidencing an oral agreement entered into September 22, 1943.

6. The affairs of Equipment Associates were managed by Samuel B. Stocking, for which he was paid \$200.00 per month, and its books of account were kept by E. A. Seaton, for which he was paid \$30.00 per month, both items being deductions before partners' distribution of earnings. E. A. Seaton was also the regular bookkeeper for petitioner. Equipment Associates employed no other employees. It used the office of petitioner for which no rent or charge was paid. Petitioner and Equipment Associates kept separate books and records and there

was no intermingling of the partnership and corporate funds or records. Equipment Associates owned no other property except the equipment described in paragraph 7 below and acquired in the manner therein set forth.

7. During the war period petitioner's activity was primarily the handling of Government business for the Army and Navy. The availability for use of certain dock equipment, to wit: Clark-Fork Type Lift Trucks, was essential to the proper conduct of petitioner's business. This equipment was considered essential war material and could not be acquired except on priority. Petitioner could obtain these priorities on account of its essential war activities. Prior to September 22, 1943, petitioner had purchased and owned a considerable amount of this equipment. Subsequent to September 22, 1943, and at all times material to this proceeding, petitioner obtained the necessary priorities and purchased equipment similar to that already described, which it immediately transferred to the partnership Equipment Associates. Simultaneously with this transfer, Equipment Associates leased back to petitioner the use of said equipment at rentals set forth in paragraph 8 below. In addition to leasing said equipment from Equipment Associates, petitioner also leased the use of similar equipment from the United States Army and others. Attached hereto and made a part hereof as Exhibit 2 is a true and correct copy of a Sale and Lease Agreement dated October 8, 1943, executed by petitioner and Equipment Associ-

ates. Similar sale and lease agreements were executed by petitioner and Equipment Associates in March, 1944, and and in June, 1945. All of said sale and lease agreements were substantially similar in terms to those contained in Exhibit 2, differing only as to date and the amount of the sales value of the equipment.

8. The rentals paid by petitioner to Equipment Associates for the use of the equipment pursuant to the sale and lease agreements described in paragraph 7 above were as follows:

1943	\$ 6,892.50
1944	41,134.82
1945	29,434.46
1946	11,782.32
1947	900.00

Attached hereto and made a part hereof as Exhibit 3 is a true and correct list of all rentals paid by petitioner for equipment rented from Equipment Associates and from the United States Army and others for the period beginning January, 1942, and ending February, 1947. The rentals paid were the same in all cases for comparable periods and were all in accord with Tacoma Terminal Tariffs filed with the Public Service Commission of the State of Washington, in compliance with Sec. 10383 of Remington's Revised Statutes of Washington.

9. The petitioner secured authority from the War Production Board for the purchase of the needed equipment because it could secure such authority; the petitioner, in three cases, ordered the

equipment and sent a check with the order and before these checks were returned to Tacoma for payment, the partnership gave petitioner a check for the exact amount of the check petitioner had sent with the order, plus freight, except in one case. The pertinent dates and amounts are as follows:

Date Petitioner's Check	Amount	Date Paid	Date Equip. Assoc. Check
9/30/1943	\$ 9,529.44	10/13/1943	10/11/1943
3/21/1944	10,298.60	4/ 3/1944	3/27/1944
6/16/1945	10,319.61	6/27/1945	7/30/1945

10. The capital invested in Equipment Associates consisted solely of cash furnished in equal amounts by the partners. Each partner contributed \$2,500.00. The investment made by W. Hopkins was from his personal funds. Investments made by the other partners were in part from personal funds and in part from bank loans.

11. During the period here involved no dividends were declared by petitioner. Prior to this period the last dividend was in 1942, and the first dividend after this period was in January, 1946, in the amount of \$12,000.00. Corporate salaries authorized by petitioner under dates of September 1, 1941, and November 1, 1943, and paid to the officers designated below during the period here involved were as follows:

Officer	Sept. 1, 1941	Nov. 1, 1943
R. H. Shaffer	\$12,000	.....
Samuel B. Stocking	9,600	\$12,750
K. M. Kennell	4,800	9,850
W. Hopkins	4,500	6,000
Total.....	\$30,900	\$28,600

Attached hereto and made a part hereof, as Exhibit

4, is a true and correct summary of the partners' investments and withdrawals in Equipment Associates for the period involved in this proceeding.

12. The following then-existing facts were considered by the partners of Equipment Associates before the decision to organize the partnership was made:

(1) Petitioner needed an assured source of equipment.

(2) It was becoming difficult to secure equipment.

(3) The business of the petitioner at that time consisted almost entirely of handling shipments in connection with World War II which might cease at any time due to changes in war conditions or termination of the war; the particular shipments at that time being for the Alcan Highway to Alaska and lend-lease goods to Russia.

(4) Payments for rental equipment were substantial.

(5) Petitioner's profits were such that it already was in the 90% bracket under the excess profits tax and no substantial benefit would result from petitioner acquiring the necessary equipment.

13. The partnership Equipment Associates filed income tax returns for the years 1944 to 1946, inclusive, including the period from January 1, 1947, to June 30, 1947, when it was liquidated, in which it

reported gross profits, deductions and net profits as follows:

	1944	1945	1946	1/1-6/30/47
Gross Profit	\$41,468.32	\$30,568.07	\$11,725.32	\$ 912.72
*Deductions	7,183.40	8,277.91	5,135.23	1,035.79
	<u>\$34,284.92</u>	<u>\$22,290.16</u>	<u>\$ 6,590.09</u>	<u>(\$ 123.07)</u>
Distribution				
Stocking	\$11,428.31	\$7,430.05	\$2,196.69	
Kennell	11,428.31	7,430.05	2,196.70	
Hopkins	11,428.30	7,430.06	2,196.70	

* Includes salary for S. B. Stocking of \$2,400.00 per year for 1944, 1945 and \$1,050.00 for 1946.

14. Attached hereto and made a part hereof as Exhibit 5 is a true and correct summary of the working capital position of petitioner on certain designated dates, to wit: August 31, 1943, September 30, 1943; December 31, 1943; March 21, 1944; December 31, 1944, and June 16, 1945.

15. Attached hereto and made a part hereof as Exhibits A, B and C, respectively, are the original corporation income and declared value excess-profits tax returns of petitioner, including schedules and other documents attached to said returns, for the taxable years ending December 31 of 1944, 1945 and 1946.

16. Attached hereto and made a part hereof as Exhibits D, E, F and G, respectively, are correct copies of partnership income tax returns of Equipment Associates for the years 1944 to 1946, inclusive, and for the period ending June 30, 1947.

17. On April 23, 1946, Equipment Associates sold six pieces of equipment to petitioner for the sum of

\$10,613.49, plus State of Washington sales tax of \$318.40.

The remaining three pieces of equipment were distributed to the partners on June 30, 1947, and the partners sold said equipment to petitioner on October 27, 1947, for \$2,500.00 each in cash.

18. Subject to the approval and consent of the Court, either of the parties hereto may withdraw any or all of the exhibits attached hereto, or as may be otherwise received in evidence at this proceeding, for the purpose of preparing and substituting in their stead photostat copies thereof.

/s/ HENRY C. PERKINS,
Attorney for Petitioner.

/s/ CHARLES OLIPHANT, FHP,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

EXHIBIT 1

Partnership Agreement

This Agreement Witnesseth:

On September 22, 1943, Ralph H. Shaffer, Samuel B. Stocking, Kenneth M. Kennell and Winfred Hopkins, entered into a copartnership agreement, which agreement was then oral.

Now, Therefore, this written agreement evidences the articles of copartnership and agreement between the above-mentioned parties.

1. The partnership shall be known and shall op-

erate and transact business under the firm name and style of Equipment Associates, in the City of Tacoma, Pierce County, Washington.

2. The purpose and business of said copartnership shall be primarily to furnish certain equipment for the use of Shaffer Terminals, Inc., and used in essential war work. It is understood that the finances of Shaffer Terminals, Inc., are not sufficient to justify the purchase by said Shaffer Terminals, Inc., of said equipment, such as dock tractors, lift trucks, etc. Equipment Associates will purchase such equipment, hold the same for the exclusive use of Shaffer Terminals, Inc., during the duration of the present emergency, and lease said equipment to said Shaffer Terminals, Inc., at a reasonable rate of rental. When not being used by Shaffer Terminals, Inc., said equipment may, with the consent of Shaffer Terminals, Inc., be temporarily leased to others who have use for said equipment in essential war work.

3. Each partner will contribute an equal amount of money to the capital of the copartnership and will share equally in the profits of said business if there should be such profits. If salaries are to be paid to any of the partners, the amounts and terms of payment of such salaries will be determined by a majority vote of the partners and such salaries shall be in addition to the share of such partner or partners in the net profits.

4. Said partnership may, if decided by a vote of the partners, finance other institutions for like equipment to be used in essential war work. At the

time of the termination of the war or the emergency created thereby, the partnership will then determine the disposition to be made of the assets of the partnership.

5. It is not contemplated that it will be necessary for any partner to devote a considerable amount of his time to the affairs of the copartnership. Until otherwise determined by the copartnership, the affairs of the copartnership shall be under the supervision of Samuel B. Stocking, who is authorized to sign all documents and checks on banking accounts on behalf of the copartnership.

6. The copartnership is authorized and empowered to purchase from Shaffer Terminals, Inc., such equipment as Shaffer Terminals, Inc., may desire to dispose of at prices to be agreed upon between the copartnership and said Shaffer Terminals, Inc.

7. These articles of copartnership may be amended and the powers of the partnership enlarged by the mutual agreement of the parties hereto.

8. This partnership shall continue for a period of ten (10) years but may be terminated at any time by the action of any partner in giving notice to the other partners of the termination of this agreement. In the event that the partnership is terminated, as herein last provided, the remaining partners shall have the right, and are given the option, to purchase the interest of the retiring partner at the then book value of his interest as shown by the books of the partnership.

9. In the event of the death of any partner, the remaining partners are authorized to continue the business of said partnership until such time as the heirs or legal representatives of the deceased partner take such action as will cause a dissolution of the partnership.

10. Until otherwise determined by the action of the partners, the principal place of business of the partnership will be at the general offices, Dock No. 1, of Shaffer Terminals, Inc., in the city of Tacoma, Washington.

It Witness Whereof, the parties hereto have hereunto set their names this 8th day of October, 1943.

/s/ RALPH H. SHAFFER,
Tacoma, Wash.

/s/ SAM B. STOCKING,
Route #1, Box 442,
South Tacoma, Wash.

/s/ K. M. KENNEL,
3715 East L Street,
Tacoma, Wash.

/s/ WINFRED HOPKINS,
2005 East 34th Street,
Tacoma, Wash.

EXHIBIT 2

Sale and Lease Agreement

This Sale and Lease Agreement made and entered into as of September 30, 1943, by and between Shaffer Terminals, Inc., a corporation, and Equipment Associates, a copartnership, consisting of Ralph H. Shaffer, Samuel B. Stocking, Kenneth M. Kennell and Winfred Hopkins,

Witnesseth: Shaffer Terminals, Inc., has heretofore purchased certain machinery and equipment described in "Exhibit A," hereto attached and made a part hereof, as if fully set forth in this paragraph.

On September 30, 1943, Shaffer Terminals, Inc., sold and transferred said equipment to said Equipment Associates for the sum of \$9,529.44, under the following terms and conditions, to wit:

Shaffer Terminals, Inc., reserves the exclusive right to lease said equipment from Equipment Associates during the entire time of the emergency created by the existing war in which the Government of the United States of America is engaged and said Shaffer Terminals, Inc., agrees to pay to Equipment Associates a monthly rental of \$3.00 per hour of use, minimum 200 hours per month, for the use of said equipment and machinery until a different monthly rental is agreed upon by the parties hereto. Rate reduced to \$2.75 per hour with no minimum on March 1, 1944.

In the event Equipment Associates shall determine to dispose of any of said equipment, Shaffer Terminals, Inc., is given the first right to purchase

said equipment at a price to be agreed upon by the parties hereto and if a price cannot be agreed upon, each party will name one arbitrator; the two arbitrators thus selected will name a third arbitrator, and the determination of any two of said arbitrators shall be binding upon the parties hereto and the equipment will be sold at the price so fixed; provided, that Shaffer Terminals, Inc., shall not be obligated to purchase said equipment and machinery but may exercise its option so to do.

It is contemplated that further equipment and machinery will be required from time to time by Shaffer Terminals, Inc., and that said equipment will be provided by said copartnership and leased by said Shaffer Terminals, Inc. If and when said equipment and machinery is so purchased and so leased, an inventory of said equipment and machinery, together with the monthly rental to be paid therefor, shall be attached to this agreement and identified as a part thereof by the signatures of the parties hereto and thenceforth the terms of this agreement shall apply to said additional equipment and machinery.

It is understood that the equipment and machinery herein referred to is necessary for the operations of Shaffer Terminals, Inc., in doing essential war work; that the finances of said Shaffer Terminals, Inc., are not such at this time as to justify the purchase by said Shaffer Terminals, Inc., of said equipment and machinery and that the said partnership, Equipment Associates, has been organized for the purpose, among other things, of providing the necessary finances for Shaffer Terminals, Inc.

Shaffer Terminals, Inc., will at all times keep any and all of said leased property insured against fire, theft, property damage and public liability, such insurance to be payable to the parties as their interests may appear. Shaffer Terminals, Inc., will hold Equipment Associates harmless from any liability on account of any accidents which may happen to said equipment and machinery and all liability to any parties for the use thereof. Shaffer Terminals, Inc., will pay all operating costs and ordinary maintenance and repairs for said equipment and machinery and at the termination of the rental period will return said property to Equipment Associates in as good condition as when received, ordinary wear and tear excepted.

In Witness Whereof, Shaffer Terminals, Inc., has caused this contract to be executed by its officers thereunto duly authorized and Equipment Associates has caused this instrument to be executed for and on its behalf by Samuel B. Stocking, the duly authorized manager of said copartnership, this 8th day of October, 1943, the contract to be effective as of September 30, 1943.

SHAFFER TERMINALS, INC.

By /s/ RALPH H. SHAFFER,

/s/ K. M. KENNEL,

Secretary.

EQUIPMENT ASSOCIATES,

By /s/ S. B. STOCKING,

Managing Partner.

EXHIBIT 3

List of Rentals Paid by Shaffer Terminals, Inc., on
Account of Leased Equipment

1942	U. S. Army	Equipment Associates	All Others
January			
February			
March			\$ 519.00
April			
May			
June			
July			
August			
September			
October			576.00
November			816.00
December	\$ 1,726.50		1,466.00
	<hr/>		<hr/>
	\$ 1,726.50		\$ 3,377.00
1943			
January	\$ 2,236.50		\$ 534.75
February	1,800.00		243.00
March	2,781.00		150.00
April	1,800.00		
May	2,940.00		948.00
June	2,850.00		2,007.00
July	1,881.00		2,859.00
August	2,049.00		2,091.00
September	1,710.00		1,716.00
October	1,800.00	\$ 1,800.00	
November	1,800.00	2,347.50	
December	2,046.00	2,745.00	267.00
	<hr/>	<hr/>	<hr/>
	\$25,693.50	\$ 6,892.50	\$10,815.75
1944			
January	\$ 1,800.00	\$ 2,283.00	
February	1,800.00	1,800.00	
March	286.00	704.00	
April	302.50	1,476.75	
May	2,865.00	4,787.75	
June	2,066.50	3,833.50	
July	4,544.50	4,776.06	
August	4,766.25	5,558.44	
September	4,053.75	4,269.38	
October	4,903.50	4,516.19	
November	2,581.75	5,411.00	
December	2,633.50	1,718.75	
	<hr/>	<hr/>	
	\$32,603.25	\$41,134.82	

Shaffer Terminals, Inc., vs.

1945	U. S. Army	Equipment Associates	All Others
January	\$ 3,388.75	\$ 3,397.63	
February	1,692.00	3,454.00	
March	1,240.25	1,120.63	
April	1,290.25	1,607.38	
May	3,682.00	3,572.94	
June	1,918.75	2,619.38	
July	1,696.50	4,888.81	
August	272.25	2,749.31	
September	108.00	1,397.50	
October		397.38	
November		671.00	
December		3,558.50	

\$15,288.75

\$29,434.46

1946	
January	\$ 2,684.69
February	1,115.13
March	3,932.50
April	450.00
May	450.00
June	450.00
July	450.00
August	450.00
September	450.00
October	450.00
November	450.00
December	450.00

\$11,782.32

1947	
January	\$ 450.00
February	450.00

\$ 900.00

Equipment Rented to Other Than Shaffer Terminals

1944		
June	\$ 93.50	
July	48.00	
December	192.00	\$ 333.50
1945		
March	\$ 13.50	
April	232.50	
May	627.00	
July	49.50	
December	21.00	943.50
		<hr/>
		\$1,277.00

EXHIBIT 4

Equipment Associates
Summary of Partner's Investments and Withdrawals

	R. H. Shaffer	S. B. Stocking	K. M. Kennell	W. Hopkins
Cash invested 10/11/43.....	\$2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
R. H. Shaffer's equity purchased by three partners.....	(2,500.00)	833.34	833.33	833.33
Profit Distributed:				
To October 20, 1943.....	246.95	\$ 246.95	\$ 246.95	\$ 246.96
To December 31, 1943.....	.....	1,486.86	1,486.86	1,486.86
1944.....	.....	11,428.31	11,428.31	11,428.30
1945.....	.....	7,430.05	7,430.05	7,430.06
1946.....	.....	2,196.69	2,196.70	2,196.70
1947.....	.....	(189.01)	(189.01)	(189.02)
Drawings:*	\$ 246.95	\$25,933.19	\$25,933.20	\$25,933.19
12/30 paid Muriel H. Shaffer, Administratrix.....	\$ 1.37	\$ 1.37	\$ 1.38	\$ 1.37
Cash.....	245.58	.....	.....	.....
1/10/44 cash.....	.....	1,000.00	1,000.00	1,000.00
† 4/44 cash.....	.....	900.00	900.00	900.00
† 14/44 cash.....	.....	600.00	600.00	600.00
7/15/44 cash.....	.....	1,500.00	1,500.00	1,500.00
		1,000.00	1,000.00	1,000.00

	R. H. Shaffer	S. B. Stocking	K. M. Kennell	W. Hopkins
8/31/44	1,000.00	1,000.00	1,000.00
9/15/44	1,500.00	1,500.00	1,500.00
10/31/44	750.00	750.00	750.00
12/29/44	2,500.00	2,500.00	2,500.00
1/15/45	800.00	800.00	800.00
3/10/45	1,600.00	1,600.00	1,600.00
8/23/45	1,000.00	1,000.00	1,000.00
6/ 9	1,500.00	1,500.00	1,000.00
†30/45	1,500.00
8/16/45	500.00	.....	.....
9/ 3/45	1,000.00	1,000.00	.....
10/11	500.00	1,500.00
1/15/46	1,000.00	1,000.00	1,000.00
4/25/46	3,537.83	3,537.83	3,537.83
9/30/46	765.00	765.00	765.00
1/15/47	750.00	750.00	750.00
7/30/47	400.00	400.00	400.00
Equipment	35.74	35.74	35.74
	\$ 246.95	2,293.25	2,293.25	2,293.25
		<u>\$25,933.19</u>	<u>\$25,933.20</u>	<u>\$25,933.19</u>

* The withdrawals do not include \$2,400.00 per year for 1944, 1945 and 1946 drawn by Samuel B. Stocking.

† Dates illegible.

EXHIBIT 5

Shaffer Terminals

Summary of Working Capital Position

Date	Bank Bal.	Accts. Rec.* Month End	Notes Pay. Month End	Accts. Pay. Month End	Social Security and Income Tax Reserves
8/31/43.....	\$ 115.72	\$120,946.06	\$15,000.00	\$27,399.19	\$23,670.46
9/30/43.....	28,683.33	134,756.42	35,000.00	37,538.50	13,293.22
12/31/43.....	19,297.28	104,345.78	32,000.00	12,317.73	.....
3/21/44.....	30,512.47	51,782.87	27,000.00	9,867.93	43,849.77
12/31/44.....	86,818.60	80,945.50	52,000.00	49,496.67	.....
6/16/45.....	63,129.76	108,473.80	7,000.00	33,168.15	20,178.05

* Army

Navy

Dept. of Agriculture

Soviet Purchasing Com.

British Purchasing Com.

Totals

Total of columns 2, 3, and 4. (Enter as item 13, page 1)

*Except dividends received from corporations reported under line 1 (Form 706-101, 1968, and dividends received in the hands of estate 80) of the Internal Revenue Code, which dividends should be included in column 2.

†Dividends on stock accounts by Federal savings and loan associations in form of share accounts earned prior to March 30, 1954, should not be listed, but the amount should be included in item 13.

Schedule F—COMPENSATION OF OFFICERS

1. Name and address of officer

2. Official Title

3. Title Received in Service

4. Percentage of Corporation's Stock Owned

5. Amount of Compensation

Mr. My. H. H. H.

Mr. H. H. H.

President

Mr. H. H. H.

100%

\$ 272.10

Mr. H. H. H.

Total compensation of officers. (Enter as item 14, page 1)

\$ 272.10

Note: Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of \$75,000 was paid to any officer or director.

Schedule G—BAD DEBTS (See Instruction 20) (See items 1 and 2)

1. Taxable Year

2. Was income reported?

3. State or States

4. Bad debts in excess of \$100,000

5. Amount of loss

6. Amount of loss

1940

1941

1942

1943

1944

1. Check whether deduction claimed on previous return with respect to bad debts was in excess of \$100,000. If so, enter as item 21, page 1.

2. Check whether deduction claimed on previous return with respect to bad debts was in excess of \$100,000. If so, enter as item 21, page 1.

Schedule H—TAXES (See Instruction 22)

1. Federal

2. State

Old Age

Unemployment

Excise

Capital Stock

Gross Earnings

Real Estate

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

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Other

Other

Other

Other

Other

Other

Other

Other

Schedule I—CONTRIBUTIONS OR GIFTS PAID (See Instruction 23)

1. Name and address of contributor

2. Amount

Schedule

Total. (Enter as item 24, page 1, subject to 5 percent limitation.) (See Instruction 23)

Schedule J—DEPRECIATION (See Instruction 24)

1. Kind of Property (If Schedule, enter number of which asset is included)

2. Date Acquired

3. Cost or other basis (Do not include land or other non-depreciable property)

4. Assets Fully Depreciated by 12/31 of Year

5. Depreciation Allowed for Year

6. Remaining Basis (If None, Enter 0)

7. Total Depreciation Allowed for Year

8. Depreciation Allowed for Year

Mach. & Equip.

1928/41

\$48,785.10

\$

\$21,048.88

\$19,681.84

15

\$ 5,479.68

Office

"

\$ 604.65

\$

\$ 3,014.13

\$ 1,990.82

15

\$ 109.62

Autos

1940/41

\$ 930.08

\$

\$ 1,009.40

\$ 1,920.89

4

\$ 610.50

Total. (Enter as item 25, page 1)

\$7,885.84

\$

\$5,069.79

\$2,183.05

\$

\$ 6,196.57

Schedule K—OTHER DEDUCTIONS (See Instruction 29)

Repairs - Machinery: 1,548.94

QUESTIONS

1. Date of Incorporation: April 15, 1981
2. State or country: Wash.
3. State collector's office where the corporation's return for the preceding year was filed: Wash.
4. The corporation's books are in care of: Corp. Officers, Tacoma, Wash.
5. Number of places of business: 100
6. Did the corporation during the taxable year have any Government contracts or subcontracts? (Answer "yes" or "no") No. If answer is "yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts. (See Instruction G-20.)
7. Is the corporation a personal holding company within the meaning of section 561 of the Internal Revenue Code? No. (If so, see additional return on Form 1000-B must be filed.)
8. Is this a consolidated return? No. (If so, provide from the estimator of Internal Revenue for your district Form 211, Consolidated Schedule, which shall be filed in, with it, and filed as a part of this return.)
9. If this is not a consolidated return: (a) did the corporation own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? No. (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of the corporation's

- voting stock? (If either answer is "yes," attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return made on the basis of each receipt and disbursement? If not, describe fully in separate statement.
11. Did the corporation at any time during the taxable year have in its employ more than eight individuals? (Answer "yes" or "no") If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? (Answer "yes" or "no") If answer to second question is "yes," attach statement as required by Instructions 16 and 17.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis is used, explain fully in separate statement, giving date inventory was last recomputed with stock.
13. Did the corporation make a return of information on Forms 1066 and 1069 or Form W-2 (or Form W-3a) for the taxable year 1964 (see Instruction O-11)?
14. Has any transaction described in Instruction G-18 occurred on or after January 1, 1964? (Answer "yes" or "no")
15. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") (If answer is "yes," attach statement as required by Instruction K-20.)



Line	Description	1990		1991		Total	
		Amount	Percent	Amount	Percent	Amount	Percent
1.	Cash			\$ 15,228.28	28	\$ 86,618.65	65
2.	Notes and accounts receivable						
	Less: Reserve for bad debts			104,345.78	78	80,945.60	60
3.	Investments (describe in separate schedule)						
4.	Intergovernmental relationships:						
	(a) Federal Government (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(b) State of Maryland (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(c) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(d) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(e) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(f) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(g) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(h) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(i) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
	(j) Federal Reserve Bank (Treasury or Social Security Administration, or the District of Columbia, or District of Columbia)						
5.	Capital assets						
	(a) Depreciable assets (describe in separate schedule)	\$ 33,154.18		\$ 37,888.84			
	Less: Reserve for depreciation	30,069.78		38,064.38		15,992.38	
	(b) Depreciable assets						
	Less: Reserve for depreciation						
	(c) Land			7,500.00		8,160.00	
6.	Other assets (describe)			132.95			
7.	Other assets (describe)			131,841.40		194,317.45	
8.	Liabilities						
	(a) Accounts payable			15,317.73		48,888.88	
	(b) Notes, notes, and mortgages payable						
	(c) With original maturity of less than 1 year	\$ 38,000.00		\$ 38,000.00			
	(d) With original maturity of 1 year or more					38,000.00	
	(e) Accounts receivable (describe)			2,842.52		2,842.52	
	(f) Other			2,842.52		2,842.52	
9.	Other liabilities (describe)						
10.	Reserve for contingencies (describe in separate schedule)						
11.	Capital stock						
	(a) Preferred stock						
	(b) Common stock	\$ 30,000.00		\$ 30,000.00		\$ 30,000.00	
12.	Paid-in capital (describe)						
13.	Retained earnings (describe)						
14.	Unrealized gains and losses (describe)						
15.	Other (describe)						

Schedule M—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

EXCESS PROFITS TAX. (See Instructions for Form 112)

- 11 If corporation makes association under section 727 of the Internal Revenue Code, state basis of claim:
- 12 If any gross profit tax return is being filed for the reason that the excess profits tax imposed under the Internal Revenue Code is not payable, the following Schedule N should be filed: The completion of Schedule N does not constitute the filing of a return under the Internal Revenue Code.

Schedule N—EXCESS PROFITS NET INCOME COMPUTATION

1. Normalized net income (computed without credit for income subject to income profile tax and dividends received credit) (line 85, page 1)		6. Dividends received credit adjustment (line 5, page 1, excluding the part of the dividends received credit on which the 10% tax applies) (line 85, page 1, less 10% of dividends received on stock held primarily for sale to customers by a dealer in securities)	
2. Tax short-term capital gain (50% net enter net short-term capital loss)		7. Net gain from sale or exchange of capital assets (line 19 (a), page item 54, page 1)	
3. 50 percent of interest on borrowed capital		8. Income from retirement or discharge of bonds, etc.	
4. Adjustment to net operating loss deduction under section 711 (b) (2) (L)		9. Refunds and interest on Agricultural Adjusted Net Value	
5. Total of lines 1 to 4		10. Reversal of last claim	
		11. Total of lines 6 to 10	
12. Excess profits net income (the excess of line 5 over line 11)			



Contributions—Schedule J

Shaffer Terminals	1944 Return
American Red Cross, Tacoma, Wash.	\$ 400.00
National Prob. Ass'n	10.00
Tacoma Police Relief	10.00
YMCA	125.00
Com. Chest	800.00
Tuberculosis League	25.00
Pacific Lutheran College	500.00
College of Puget Sound	500.00
	<hr/>
	\$2,370.00
5% of \$44,592.10	\$2,229.61
	<hr/>
Unallowable	\$ 140.39

Other Deductions—Line 29

Auto Expense	\$ 1,660.29
Advertising	1,257.52
Crane Expense	4,632.06
Dues	435.07
General Expense	9,325.09
Insurance	1,709.98
Light Water and Power.....	1,807.57
Office Expense	2,220.25
Tractor Expense	9,804.18
Telephone and Telegraph	2,237.10
	<hr/>
	\$35,089.11
Less Unallowable Dues.....	562.00
	<hr/>
	\$34,527.11

Labor—Schedule B

Dock	\$ 37,605.00
Payroll	180,853.87
Miscellaneous	7,493.00
	<hr/>
	\$225,951.87
Less Credit	60,500.59
	<hr/>
	\$165,451.28

Gross Receipts—Line 4

Loading and Unloading	\$139,162.71
Handling	137,158.72
Miscellaneous	12,165.59
Storage	51,542.45
Wharfage	156,434.69
	<hr/>
	\$496,464.16

Fixed Assets		Year 1944
Shaffer Terminals	1/1/44	12/31/44
Machinery and Equipment	\$45,680.95	\$49,728.10
Furniture and Fixtures	4,523.14	4,604.65
Autos	2,930.09	2,930.09
	<hr/>	<hr/>
	\$53,134.18	\$57,262.84
Rent		
Equipment		\$ 72,810.91
Equipment in General Expense		4,083.00
Plant Facilities		107,641.02
		<hr/>
		\$184,534.93

Shaffer Terminals, Inc.
P.O. Box 1157

Tacoma, Washington

STATUTE OF
LIMITATIONS
EXPIRES

DIVISION

FORM NO. OF RETURN 1120 & 1121

FIELD EXAM.

OFF. INTERVIEW

EXPIRES PER

CONFER. AUDIT

YEAR AND SCHOOL NO.	KIND OF TAX OR PENALTY	CLAIMS	REPORT AS SUBMITTED	APPROVED REPORT	Decision	INTEREST (FOR COLL'N OF DUE)	
						DATE	AMOUNT
44	PI						
4000140				Survey			
44	PI						
4100435				Survey			
TOTALS							

GROUP OR EXT. Swedish DATE 1/2/47

EXAMINER

TO CONF. SECT.

REL. CASES, REF. CASES
OTHER STDS. REMARKS

AGRD DEPT REC'D AGR

REF TO EXAMPR REC'D AGR

APRD 6-3-47 J. I. Kellogg REVR

FUEL NOTICE PROT DEF AGR

EXT.

INF. DEM. REC'D NO.

INF. CONF. BY AGR

Form 1148-CONTROL CARD

TREASURY DEPARTMENT-Inventories Bureau

(Divided Month) 1903

10-1108 4-47

DISPOSED OF 6-6-47

CLOSED: B. X. C. D. Y. P. R. S. C. TO BUREAU

CLOSED: E. L. E. M. F. A. E. H. F. F. TO BUREAU

CLOSED: E. L. E. M. F. A. E. H. F. F. TO BUREAU

SURVEYED

Income Tax Unit

IT:C1:CC-2

Treasury Department

Office of

Commissioner of Internal Revenue

Washington 25

Notice of Adjustment

of Excess Profits Tax Ten Per Cent Credit

Serial No. of Return: 4000140-45

Allowed: \$2,248.84

Schedule No. 552

Shaffer Terminals,

P. O. Box 1157,

Tacoma, Wash.

Gentlemen:

An examination of the excess profits tax return filed for the year 1944, indicates that credit was not taken thereon for the ten per cent credit provided by Section 784(a) of the Internal Revenue Code, as added by the Tax Adjustment Act of 1945. Such credit has been allowed in the amount stated above, and has been abated, credited, or refunded in accordance with the present status of your tax account for the year involved, as stated below.

A check for any amount refundable is transmitted herewith. No interest is payable on this allowance.

By direction of the Deputy Commissioner:

Very truly yours,

/s/ T. C. ATKINSON,
Head of Division.

Abated: \$2,248.84

Credited: \$

Refunded: \$

Internal Revenue Agent in Charge:

Bureau records indicate that the return in this case was referred to you. In accordance with Com-Mim. Coll. No. 5910 R. A. No. 1452 you will have the amount of this allowance stamped on the return and this copy attached thereto.

Form 7986-D

Aug., 1945

(Duplicate)

Consent Fixing Period of Limitation Upon
Assessment of Income and Profits Tax

In pursuance of the provisions of existing Internal Revenue Laws, Shaffer Terminals, Inc., a taxpayer (or taxpayers) of Tacoma, Washington, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or

before June 30, 1950, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

[Seal] SHAFER TERMINALS, INC.,
Taxpayer.

By /s/ K. M. KENNEL,
Vice President.

/s/ GEO. J. SCHOENEMAN,
Commissioner of Internal
Revenue.

By C.R.M.

February 11, 1949.

[Stamped]: Received Feb. 11, 1949, Northwestern Division Seattle office.

(Duplicate)

Consent Fixing Period of Limitation Upon
Assessment of Income and Profits Tax

....., 19....

In pursuance of the provisions of existing Internal Revenue Laws, Shaffer Terminals, Inc., a taxpayer (or taxpayers) of Tacoma, Washington, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

[Seal] SHAFFER TERMINALS, INC.,
Taxpayer.

By /s/ SAM B. STOCKING,
President.

/s/ GEO. J. SCHOENEMAN,
Commissioner of Internal
Revenue.

By /s/ L. C. H.

Nov. 18, 1947.

[Stamped]: Received Nov. 18, 1947, Seattle Division.

NOT INVESTIGATED 1944

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

SHAPING BEHAVIOR

P.O. Box 1157

Tacoma Wash.

Business group serial number entered on page 1, Form 1120 118

EXCESS PROFITS TAX COMPUTATION

File
Cash 339
Serial
No. 4000140
District Wash
(Cashier's stamp)
5627
Cash Clerk M. O.
First payment
144

	Column 1 Income Credit Married	Column 2 Income Credit Single
Excess profits net income (line 18, Schedule A)	\$ 43,240	03
Specific exemption	\$ 10,000	
Excess profits credit - based on income (line 46, Schedule B)		
Excess profits credit - based on invested capital (line 40, Schedule C)	2,568	04
Dividend credit - based on adjustment (attach schedule)		
Difference between 10-1 and Item 6	19,568	04
Adjusted net income (Item 7, column 1, or Item 7, column 2, whichever is applicable)	23,671	99
95 percent of Item 8	22,486	39
Net income (Item 36, page 1, Form 1120)	42,362	49
Less: (a) Dividends received credit (85 percent of total of column 2, Schedule E, Form 1120 (excluding dividends received on certain preferred stock of a public utility), but not in excess of 85 percent of item 10 above)		
(b) Credit for dividends paid on certain preferred stocks if taxpayer is a public utility (20 percent of line 30, page 2, Form 1120)		
Surplus net income (computed without regard to the credit provided in section 26 (a) (sum of lines 18 and 21, page 2, Form 1120) and without regard to 80 percent of the credit provided in section 26 (b))	42,362	49
80 percent of Item 12	33,889	99
Income tax under Chapter 1 (other than section 102) for the taxable year (Item 43, page 1, Form 1120)	8,846	84
Taxes of Item 13 over Item 14	28,943	55
Item 9, or Item 15, whichever is lesser	22,486	39
Amount deferred by reason of the application of section 710 (a) (5) (relating to abnormality under section 722) (attach schedule)		
Excess profits tax:		
(a) Item 15 minus Item 17	22,486	39
(b) If schedule is filed under question (g), page 2, amount of tax as computed in such schedule		
(c) Item 18 (a) or Item 18 (b), whichever is applicable		
Less: Credit for income taxes paid to a foreign country or United States possession allowed to a domestic corporation (question not used in computing Item 43, page 1, Form 1120)		
Item 19 (a) minus Item 19	22,486	39
Less: Credit for debt retirement (Item 22, below)		
Item 20 minus Item 21	22,486	39
Amount, if any, due to application of section 734 (adjustment in case of fraction inconsistent with prior income tax liability) (attach schedule)		
Excess profits tax due (Item 22 plus Item 23, or Item 22 minus Item 21, whichever is applicable)	22,486	39

Balance of excess profits tax (Item 18 (c), above)	\$ 22,488	30
Credits allowable under sections 780 and 781 (10 percent of Item 25) (Set in case where Item 18 is applicable, see Specific Instructions 25-29)	\$ 2,248	84
Less: of amounts paid on deficiencies or not reduction in liabilities under section 783 (b) (7)	\$	
Credits for debt retirement allowable under section 783 (60 percent of Item 27, but not in excess of 10 percent of Item 25)	\$ 3,248	84
Net credits allowed under Item 26 minus Item 28)	\$	

156
1945

Evelyn L. Mc Kee Notary Public in and for the State of Washington
Incorporating my commission from _____
(Signature) (Print name and address of notary)

I have signed this return for the person named herein and that the return (including any accompanying statement) was made by me or under my supervision.

Subscribed and sworn to before me this 15th day of June, 1965

Notary Public in and for the
State of Wash. Residing at
Tacoma.

Page 2

Questions

- (a) Date of incorporation April 16, 1921.
- (b) State or country Wash.
- (c) Collector's office in which your income tax return for the taxable year was filed Tacoma, Wash.
- (d) Is this a consolidated return? No. If so, procure from the collector Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of the consolidated income tax return.
- (e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b)(4) of the Internal Revenue Code? (Answer "yes" or "no") Yes.
- (f) Are you a transferor or transferee upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no") No.
- (g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no") No.
[Sections (1), (2), and (3)—blank.]
- (h) State amount of total assets as of the end of the taxable year. (From Form 1120, page 4, line 8, last column), \$194,317.45.
- (i) Has a constructive average base period net income under section 722 been used in computing the excess profits credit used on this return? No.
[Sections (1), (2), and (3)—blank.]
- (j) Is any unused excess profits credit adjustment computed with the use of a constructive average base period net income?.....
If the answer is "yes," attach schedule showing computation.

Schedule A.—Excess Profits Net Income Computation

Line No.	Column 1	Column 2
	Income Credit Method	Invested Capital Credit Method
1.	Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 38, page 1, Form 1120).....	
		\$42,362.49
5.	50 per cent of interest on borrowed capital.....	
		877.54
7.	Total of lines 1 to 6.....	
		\$43,240.03
16.	Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 7 minus line 15).....	
		\$43,240.03

18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company)\$43,240.03

[Lines 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 17—blank.]

Schedule B.—Excess Profits Credit—Based on Income Page 3
[No data supplied in this schedule.]

Page 4 Schedule C.—Excess Profits Credit—Based on
Invested Capital

Equity Invested Capital at the Beginning of the Taxable Year
(See Instructions for Schedule C, lines 1 to 12, inclusive)

1. Money paid in for stock, or as paid-in surplus, or as a contribution to capital.....\$20,000.00

[Lines 2 and 3—blank.]

4. (a) Accumulated earnings and profits\$83,219.31

[Sections (b) and (c)—blank.]

- (d) Accumulated earnings and profits (item 4 (a)) as adjusted by item 4 (b) and (c)..... 83,219.31

[Lines 5, 6, and 7—blank.]

8. Total of lines 1 to 7.....\$103,219.31

[Lines 8 through 13—blank.]

14. Equity invested capital at beginning of taxable year (line 8 minus line 13).....\$103,219.31

Average Addition to Equity Invested Capital During the Taxable Year

(See Instructions for Schedule C, lines 1 to 12, inclusive)

[Lines 15 through 21—blank.]

22. Total of lines 14 and 21.....\$103,219.31

Average Reduction in Equity Invested Capital During the Taxable Year

(See Instructions for Schedule C, lines 1 to 12, inclusive)

[Lines 23 through 27—blank.]

(See Instructions for Schedule C, lines 28 to 40, inclusive)

28. Average equity invested capital (line 22 minus line 27).....\$103,219.31

29. Average borrowed capital (attach schedule)\$ 36,125.68

30. Average borrowed invested capital (50 per cent of line 29)..... 18,062.84

31.	Average invested capital (line 28 plus line 30).....	\$121,282.15
32.	Total inadmissible assets.....	\$ 2,400.00
33.	Total admissible and inadmissible assets	\$173,079.43
34.	Percentage which line 32 is of line 33.....	1.3866%
35.	Reduction on account of inadmissible assets (..... per cent of line 31).....	1,681.70
36.	Invested capital (line 31 minus line 35).....	\$119,600.45
37.	Portion of line 36 (not over \$5,000,000); and credit at 8 per cent.....	\$ 9,568.04
[Lines 38 and 39—blank.]		
40.	Excess profits credit—based on invested capital (total of lines 37 to 39).....	\$ 9,568.04

Borrowed Capital

Shaffer Terminals		1944 Return			
	Additions	Reductions	Balance	Days	Product
			\$32,000.00	81	\$2,592,000.00
3/21/44		\$5,000.00	27,000.00	134	3,618,000.00
8/ 2/44	\$10,000.00		37,000.00	56	2,072,000.00
9/29/44	15,000.00		52,000.00	95	4,940,000.00
					\$13,222,000.00
Average.....					\$36,125.68

Assets

1/ 1/44.....	\$151,841.40
12/31/44.....	194,317.45
	<hr/>
	\$346,158.85
Average.....	\$173,079.43

Inadmissibles

Average	\$2,400.00
Per Cent	1.3866

UNITED STATES DEPARTMENT OF THE TREASURY
CORPORATION INCOME AND DECLARED VALUE EXCESS-PROFITS TAX RETURN 1945

91

AB 1000 DIST OF Calendar Year 1945
Period year beginning 1945, and ending 1945

4101110
Washington
998 18
7

EXHIBIT B
SHIP, FACTS
Shaffer Terminals, Inc.,
Docket #26127.

OFFICE ADDRESS
P. O. Box 1137
Tampa, - Washington
Kind of business - Warehousing and Storage
Business year ending 116
Number of shares 120

GROSS INCOME

- Gross sales (value of services are as income-determining factor)
- Less: Cost of goods sold. (From Schedule A)
- Gross profit from sales
- Gross receipts (where inventories are not an income-determining factor) \$ 591,539.88
- Less: Cost of operations. (From Schedule B) 139,122.61
- Gross profit where inventories are not an income-determining factor 252,417.27
- Interest on loans, notes, mortgages, bonds, bank deposits, etc.
- Interest on corporate bonds, etc.
- Income on United States national bonds and Treasury bonds owned in whole or in part during the year (if March 1, 1941 - (From Schedule M, line 11) (S 110))
- Income on other bonds owned on or after December 1, 1944, and obligations issued on or after March 1, 1941, by the United States or any agency or authority thereof. (Submit schedule)
- Rents
- Royalties
- (a) Income of net short-term capital gains over net long-term capital loss. (From Schedule C)
- (b) Net gains (or loss) from sale of securities of property other than capital assets. (From Schedule D)
- Dividends. (From Schedule E)
- Other income. (State nature)
- Total income in Items 2, and 3 to 14, inclusive.

DEDUCTIONS

- Compensation of officers. (From Schedule F) 22,599.96
- Salaries and wages (not deducted elsewhere) 16,382.57
- Rent 73,107.56
- Repairs Equipment Rent 26,458.21
- Bad debts. (From Schedule G) 1,167.75
- Taxes. (From Schedule H) (Deduct deferred value excess-profits tax as from 26) 2,185.45
- Contributions or gifts paid. (From Schedule I) 1,489.92
- Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)
- Depreciation. (From Schedule J) 6,665.16
- Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)
- Net operating loss deduction. (Submit statement)
- Amortization of emergency facilities. (Submit schedule)
- Advertising 1,751.01
- (a) Annuities contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.
- (b) Other deductions authorized by law. (From Schedule K) 33,223.60
- Total deductions in Items 15 to 25, inclusive.

- Net income for declared value excess-profits tax computation (Item 15 minus Item 26)
- Add: Excess on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (S 110))
- Less: Excess of net long-term capital gains over net short-term capital loss. (From Schedule C)
- Total of Item 27, 28, and 29
- Less: Deferred value excess-profits tax
- Net income
- Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of Item 9 (a) and 28)
- Adjusted net income
- Less: Adjusted excess profits net income from Form 1131. (See instruction on page 2)
- Dividends received credit (the percent of excess S. Schedule H, but not in excess of 65 percent of Item 28 minus Item 26, above)
- Normal-tax net income

TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAXES

- Total income tax (line 29 or 30, page 2, whichever is applicable) 3,592.72
- Less: Credit for income taxes paid to a foreign country or United States possession, allowed as a domestic corporation
- Balance of income tax
- Total declared value excess-profits tax (line 5, page 1)
- Total income and declared value excess-profits taxes due

AFFIDAVIT. (See instruction E)

We, the undersigned, president for vice president or chief principal officer and treasurer or chief financial officer, of the corporation for which this return is made, do hereby declare under oath that the information furnished in this return is true and correct, and contains no material misstatements or omissions, and that the information furnished in this return is true and correct, and contains no material misstatements or omissions, and that the information furnished in this return is true and correct, and contains no material misstatements or omissions.

Signature and name of taxpayer or his agent: Eugene J. McKee
Date: 12-15-45
Signature and name of preparer: [Signature]
Date: 12-15-45
Signature and name of accountant: [Signature]
Date: 12-15-45

Page 2. DOUGLAS VALUE RECORDS-PROFIT TAX COMPUTATION FORM (See Instructions)

Line No.	1. Profit before tax (deducted value income-profit tax computation (Form 81, page 1))	2. Value of capital assets at beginning of year (minus capital assets tax return for the year ended Dec 31, 1950) (See instructions for line 2, item 2, over income tax first year figure)	3. Total value of capital assets at end of year (line 2, plus line 1)	4. Dividends received (10 percent of income 28, Schedule B, but not in excess of 50 percent of line 28 minus line 28, page 1)	5. Balance subject to deducted value income-profit tax (line 1 minus total of lines 2 and 4)	6. Amount payable at 5.5 percent (5 percent of line 5, but not more than line 5) and tax	7. Balance payable at 15.5 percent (line 5 minus line 6, and tax)	8. Total declared value income-profit tax (total of line 6, and line 7, minus line 4)
	750,000.00	75,000.00	825,000.00	75,000.00	689.9	6.6%	825.0	

INCOME TAX COMPUTATION. (See Computation Instructions)

NORMAL TAX COMPUTATION

DOMESTIC CORPORATION WITH NORMAL-TAX NET INCOME NOT OVER \$250,000

9. Normal-tax net income (line 41, page 1)	10. Portion of line 9 (not in excess of \$5,000), and tax at 15 percent	11. Portion of line 9 (in excess of \$5,000 and not in excess of \$50,000), and tax at 17 percent	12. Portion of line 9 (in excess of \$50,000 and not in excess of \$25,000), and tax at 19 percent	13. Portion of line 9 (in excess of \$25,000), and tax at 31 percent	14. Total normal tax (total tax in column 8 of line 10, 11, 12, and 13)
13,150.23	1,972.53	1,788.83	1,972.53	2,576.90	2,576.90

DOMESTIC CORPORATION WITH NORMAL-TAX NET INCOME OF OVER \$250,000 AND FOREIGN CORPORATION (EXCEPT IN BUSINESS WITHIN THE UNITED STATES) EXCEPT OF ADJUSTED NORMAL-TAX NET INCOME

15. Normal-tax net income (line 41, page 1)	16. Normal tax (24 percent of line 15)
13,150.23	3,156.05

SURPLUS COMPUTATION

17. Net income (line 36, page 1)	18. Less: Adjusted income (line 39, page 1)	19. Excess of line 17 over line 18 (if any)	20. Excess of line 19 over line 18 (if any)	21. Surplus net income
13,150.23	13,150.23	0	0	0

CORPORATION WITH SURPLUS NET INCOME NOT OVER \$250,000

22. Excess of line 21 (not in excess of \$5,000), and tax at 15 percent (or 18 percent in the case of a consolidated return)	23. Portion of line 21 (in excess of \$5,000 and not in excess of \$50,000), and tax at 17 percent (or 19 percent in the case of a consolidated return)	24. Total surplus in column 8 of line 22 and 23
1,972.53	1,788.83	3,761.36

CORPORATION WITH SURPLUS NET INCOME OF OVER \$250,000

25. Surplus net income (line 21 above)	26. Surplus (18 percent of line 25) (or 19 percent in the case of a consolidated return)	27. Total normal tax and surplus (line 14 or 16, plus line 24 or 26, whichever is applicable)	28. Total tax (line 27, or line 31 Schedule C)
13,150.23	2,367.04	5,943.95	5,943.95

TAX COMPUTATION FOR REGULATED INVESTMENT COMPANY

29. Adjusted net income (line 36, page 1, but computed without regard to section 47 (a))	30. Add: Net operating loss deduction (line 27, page 1)	31. Total of lines 29 and 30	32. Less: Excess of net long-term capital gain over net short-term capital loss (from Schedule C)	33. Adjusted net income (computed under section 302 (b) (1))	34. Less: Basic surplus credit (excluding capital gain dividends) computed without regard to paragraphs (2) and (3) of section 27 (b). (Submit schedule)	35. Supplement Q net income	36. Normal tax (24 percent of line 35)	37. Net income (line 36, page 1, but computed without regard to section 47 (a))	38. Add: Net operating loss deduction (line 27, page 1)	39. Total of lines 37 and 38	40. Less: Excess of net long-term capital gain over net short-term capital loss (from Schedule C)	41. Net income (computed under section 302 (b) (2))	42. Less: Dividends (other than capital gain dividends) paid (including noncumulative dividends) (Submit schedule)	43. Supplement Q net income	44. Surplus (18 percent of line 43)	45. Net long-term capital gain (From Schedule C)	46. Less: Net short-term capital loss (From Schedule C)	47. Capital gain dividends paid (Submit schedule)	48. Excess subject to tax	49. Tax (32 percent of line 48)	50. Total tax in lines 28, 44, and 49
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Schedule A—COST OF GOODS SOLD. (See Instruction 5)

Inventory at beginning of year	Material or merchandise bought for manufacture or sale	Salaries and wages	Other costs per books (Attach itemized schedule)	Total	Less: Inventory at end of year	Cost of goods sold (enter on line 2, page 1)
--------------------------------	--	--------------------	--	-------	--------------------------------	--

Schedule B—COST OF OPERATIONS (Where inventories are not an income-deductible factor)

Relative and wages	Other costs (to be detailed):	Total (enter on line 3, page 1)
--------------------	-------------------------------	---------------------------------

Schedule C—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 15)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Current price)	4. Cost or Other Basis	5. Amount of Gain or Loss (Enter as Gain or Loss)	6. Description of Asset (If applicable, enter date of acquisition)	7. Gain or Loss (Enter as Gain or Loss)
----------------------------	------------------	--------------------------------------	------------------------	---	--	---

Additional information required for Schedule D

1. If you have sold or otherwise disposed of property, you must report the gain or loss on each item. If you have sold or otherwise disposed of property, you must report the gain or loss on each item. If you have sold or otherwise disposed of property, you must report the gain or loss on each item.

A. Domestic Operations		B. Foreign Operations		C. Other Operations	
1. Sales		1. Sales		1. Sales	
2. Cost of Sales		2. Cost of Sales		2. Cost of Sales	
3. Operating Expenses		3. Operating Expenses		3. Operating Expenses	
4. Depreciation and Amortization		4. Depreciation and Amortization		4. Depreciation and Amortization	
5. Other Income		5. Other Income		5. Other Income	
6. Other Expenses		6. Other Expenses		6. Other Expenses	
7. Income Before Income Taxes		7. Income Before Income Taxes		7. Income Before Income Taxes	
8. Income Taxes		8. Income Taxes		8. Income Taxes	
9. Net Income		9. Net Income		9. Net Income	

2. and 4. (Order as Week 12, page 1)

Article 7. COMPENSATION OF OFFICERS

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Functions	Percentage of Corporation's Stock Owned		4. Amount of Compensation Received
			4. Common	5. Preferred	
A. B. Stocking	Tacoma, Wn.	Pres.	As Reqd.		\$ 25,700
R. M. Randall	" "	V. Pres. & Sec.	Entire		9,500

Total compensation of officers: (Enter as item 16, page 1)

Note.—Schedule D-1 (IN DUPLICATES) also must be filed with this return if compensation in excess of \$75,000 was paid to any officer or director.

Schedule C.—BAD DEBTS. (See instruction III) (See notes 1 and 2)

A. Fiscal Year	B. Was License Required		C. Status of License		D. Total Amount of Charges Paid, or Not Received, in Connection with License (See Note 1)		E. Comparison of Charges to Receipts	
							F. Charges Accepted or Refused by Licensee(s)	G. Amount of Charges Accepted or Refused
1941								
1942								
1943								
1944								

Source: *Journal of the American Statistical Association*, 83 (1988), 1031-1040.

1. Check whether deduction claim represents debts which have become worthless ☐ or is an addition to a reserve ☐
2. Not including mortgage claims are capital assets and which become worthless within the taxable year. Such mortgage which become worthless within the year should be reported in Schedule C.

Schedule H.—TAXES. (See instruction 23)

Volume	Amount	Name and Address of Organization	Amount
Series	\$ 880 02	Schedule	\$ 1 500 00
County A.R.	390 43	City of St. Louis MO	1 400 00
Capital Stock	937 50		
Gross Receipts	213 15		
O.A.R.	1 726 88		
Unemployment	2 224 43		
Total (Enter as item 32, page 1)	\$ 5 183 48	Total (Enter as item 32, page 1, subject to 2 percent limitation) (See instructions 32)	\$ 3 270 00

Schedule 1—CONTRIBUTIONS OR GIFTS PAID. (See instructions.)

Schedule M.—TAXES. (See instructions.)			Name and Address of Organization		Amount
Taxable	Amount		Schedule		
Excises	480	08			
Commodities	390	43			
Capital Stock	907	50			
Gross Profits	115	15			
G.A.B.	1,720	88			
Unemployment	2,224	43			
Total. (Enter as item 22, page 1)	5,185	45			

Schedule J—DEPRECIATION. (See instruction 8B)

1. Kind of Property (If buildings, list individual buildings separately)	2. Date Acquired	3. Cost or Other Basis (Do not include land or improvements which property)	4. Amount Fully Depreciated (Ind. of Yr. 1)	5. Depreciation Allowed (Ind. of Yr. 1)	6. Remaining Depreciable Cost	7. Estimated Salvage Value in Arm. or Civilian Use	8. Total Depreciation	9. Total Cost	10. Total Salvage Value
Mach. & Equip.	1964-61	\$50,885.55	0	\$50,525.04	\$34,180.01	15	3	\$50,885.55	\$15
Office Equip.	"	\$2,350.78		\$3,124.05	\$2,354.73	15	14	\$2,350.78	\$14
Auto.	1960-61	\$2,930.08		1,018.80	1,910.18	5	2	\$2,930.08	\$10
Total (Enter on form 28, page 1)		\$56,974.42		\$57,265.49	\$37,704.83			\$56,974.42	\$39

Total. (Enter on Item 28, page 12)

Schedule E—OTHER DEDUCTIONS. (See Instructions 28)

QUESTIONS

- [illegible]

1. Total distributions to stockholders charged to earned surplus during the taxable year:				\$ 61,044.28
(a) Cash				2,154.30
(b) Stock of the corporation				34,761.81
(c) Other property				3,468.17
2. Contributions (income over 2 percent limitation)				
3. Federal income and excess-profits taxes				
4. Income taxes claimed as a credit in whole or in part in item 45, page 1				
5. Federal taxes paid on tax-free covenant bonds				
6. Excess of capital losses over capital gains				
7. Additions to surplus reserved (not separately):				
(a)				
8. Other non-deductible deductions:				
(a) Life Ins.				
(b) Federal Contrib.				
9. Adjustments for treatment of bonds (Item 15):				
(a)				
(b)				
10. Ready credits to earned surplus (Item 15):				
(a)				
11. Excess surplus and undivided profits at close of the taxable year (Schedule L)				\$ 68,922.29
12. Total of lines 1 to 11				\$ 68,922.29
13. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)				\$ 67,587.28
14. Adjusted net income (Item 38, page 1)				\$ 28,309.61
15. Nontaxable and partially exempt income:				
(a) Interest on:				
(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions				
(2) Obligations of the United States:				
(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941.				
(ii) United States savings bonds and Treasury bonds owned in the principal amount of \$5,000 or less, issued prior to March 1, 1941.				
(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941.				
(3) Obligations of instrumentality of the United States:				
(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941.				
(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941.				
(4) Other nontaxable income (Item 15):				
(i) Life Ins. C.S.V. Surplus				
(ii)				
16. Charges against surplus reserves (Item 15):				
17. Adjustments not recorded or books (Item 15):				
18. Ready credits to earned surplus (Item 15):				
19. Total of lines 15 to 18				\$ 28,309.61

EXCESS PROFITS TAX (See instructions for Form 1121)

1. Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? **Yes**
2. If a corporation claiming exemption under section 1227 of the Internal Revenue Code, state basis of claim
3. Is an excess profits tax return being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is less than (1) \$10,000 for a taxable year ending in 1945, or (2) an amount equal to the sum of the portion of \$10,000 applicable to the part of the year falling in 1945 and the portion of \$10,000 applicable to the part of the year falling in 1944, in case of a taxable year beginning in 1944 and ending in 1945, the following Schedule N should be filed in. The completion of Schedule N does not constitute the filing of an excess profits tax return.

Schedule N—EXCESS PROFITS NET INCOME COMPUTATION

1. Excess profits net income (computed without regard for income subject to excess profits tax and dividends received credit) (Item 38, page 1)				
2. Net short-term capital gain (do not enter net long-term capital gain)				
3. Net amount of interest on borrowed money				
4. Adjustments to net short-term capital gain under section 111 (a) (5) (A)				
5. Total of lines 1 to 4				
6. Dividends received credit adjustment (Item 38, page 1, excluding the case of 50 dividends received credit or exceeding from foreign dividend received credit and 50 dividends received credit not properly taken into account by a dealer in securities)				
7. Net gain from sale or exchange of capital assets (Item 38 (a), plus Item 55, page 1)				
8. Income from retirement or discharge of bonds, etc.				
9. Refunds and interest on Agricultural Adjustment Act loans				
10. Recoveries of bad debts				
11. Total of lines 5 to 10				

12. Excess profits net income (after adjustment for filing voluntarily (Item 38, page 1))



Shaffer Terminals Inc.

1945

Depreciable Assets

	1/1/45	12/31/45
Autos	\$ 2,930.09	\$ 2,930.09
Machinery and Equipment.....	49,728.10	50,685.55
Office Equipment	4,604.65	5,358.78
	<hr/>	<hr/>
	\$57,262.84	\$58,974.42

Contributions

Un. Comm. of Slavic Amer.	\$ 50.00
Red Cross	400.00
National Prob. Association	30.00
So. End Boys' Club	100.00
War Chest	600.00
Y.M.C.A.	275.00
Tuberculosis League	5.00
College of Puget Sound	250.00
Tacoma Council of Churches	100.00

\$1,810.00

Labor—Schedule B

Dock	\$ 37,957.97
Payroll	135,911.92
Miscellaneous	5,148.91

\$179,018.80

Less Credit	39,896.19
-------------------	-----------

\$139,122.61

Gross Receipts—Line 4

Loading and Unloading	\$106,696.49
Handling	119,950.16
Miscellaneous	14,826.53
Storage	22,824.28
Wharfage	127,242.42

\$391,539.88

Other Deductions—Line 29

Auto Expense	\$ 1,663.03
Crane Expense	1,437.27
Dues	843.13
General Expense	13,766.24
Insurance	1,215.21
Light, Water and Power	2,048.25
Office Expense	1,981.71
Tractor Expense	8,429.70
Telephone and Telegraph	2,570.26

\$33,954.80

Less Unallowable Dues	661.00
-----------------------------	--------

\$33,293.80

(Duplicate)

Consent Fixing Period of Limitation Upon
Assessment of Income and Profits Tax

Tacoma, Wash., Feb. 10, 1949.

In pursuance of the provisions of existing Internal Revenue Laws, Shaffer Terminals, Inc., a taxpayer (or taxpayers) of Tacoma, Washington, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1945, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1950, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

[Seal] /s/ SHAFFER TERMINALS, INC.,
Taxpayer.

By /s/ K. M. KENNEL,
Vice President.

/s/ GEO. J. SCHOENEMAN,
Commissioner of Internal
Revenue.

By /s/ C.R.M.

Feb. 11, 1949.

[Stamped]: Received Feb. 11, 1949, Northwestern Division Seattle office.

(Duplicate)

Consent Fixing Period of Limitation Upon
Assessment of Income and Profits Tax

Nov. 23, 1948.

In pursuance of the provisions of existing Internal Revenue Laws, Shaffer Terminals, Inc., a taxpayer (or taxpayers) of Tacoma, Washington, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1945, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited

from making an assessment and for sixty days thereafter.

[Seal] SHAFFER TERMINALS, INC.,
Taxpayer.

By /s/ K. M. KENNEL,
Vice Pres.-Secy.

/s/ GEO. J. SCHONEMAN,
Commissioner of Internal
Revenue.

By L.C.M.

Nov. 24, 1948.

[Stamped]: Received Nov. 24, 1948, Seattle Division.

Form 1121
Treasury Department
Internal Revenue Service

91

UNITED STATES
CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1945

or fiscal year beginning _____, 1945, and ending _____, 1946

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Shaffer Terminals

P.O. Box 1157

Tacoma, Washington

Business items listed under entered on page 1, Form 1120. 3018

EXCESS PROFITS TAX COMPUTATION

TABLE 1

1. Excess profits net income (line 18, Schedule A)

2. Available exemption

4. Excess profits credit—based on income (line 48, Schedule B)

1. **Wages profit credit**—based on invested capital (line 40, Schedule C)

1. Unaudited income profits credit adjustment (attach schedule)

1. Total of Items 2 to 5

7. Difference between Item 1 and Item 8

Adjusted gross profit net income (Item 7, column 1, or Item 7, column 2, whichever is applicable)

1. In witness of these things I have signed this

Net Income (Item 26, page 1, Form 1120)

Line 2: Dividends received credit (85 percent of total of column 2, Schedule E, Form 1120, but not in excess of 85 percent of item 10 above (excluding from the computation dividends received on certain preferred stock of a public utility))

(d) Credit for dividends paid on certain preferred stocks if taxpayer is a public utility
(20 percent of line 20, page 2, Form 1120)

Surface net income (computed without regard to the credit provided in section 26 (c) (sum of lines 18 and 21, page 2, Form 1120) and without regard to 80 percent of the credit provided in section 26 (d))

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Income tax under Chapter 1 (other than section 102) for the taxable year (item 42, page 1, Form 1120)

Source of items 12 over items 14

June 9, or July 15, whichever is later.

Images Deleted by reason of the application of section 710 (a) (5) (relating to abnormality under section 722) (attach-
ment 10)

5. Discuss possible risks:

(c) From 16 returns there 17

(3) If schedule is filed under question (6), page 2, amount of tax as computed in such schedule.

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(portion not used in computing item 43, page 1, Form 1120)

1. That is (5) minus three 10's.

Less: Credit against income profits tax (10% of Item 18 (c))

Volume 28 Number 10 June 2011

Amount, if any, due to application of section 734 (adjustment in case of position inconsistent with prior income tax liability)

(continued)

Example 1. The tax due (line 22) plus Item 23, or Item 22, whichever is applicable.

* If the individual(s) qualified (or was/were), or other principal officer; and treasurer (or assistant treasurer, or chief accounting officer) of the corporation are also members of the board, each of them must certify their status (including any compensating relationship and disqualifications) by item number 6 on Form 706-SS.

Subscribed and sworn to before me this 14th day of June, 1946

Notary Public in and for the State of West. Virg. COMMISSION EXPIRES
Tenn. DATE

I hereby certify that the above is a true and correct copy of the original as filed in my office.

Subscribed and sworn to before me this 14th day of May 1946

Figure 1. Aerial view of the study area. The area is divided into three main sections: the northern section (top), the central section (middle), and the southern section (bottom). The northern section is characterized by a dense forest of tall trees, while the central and southern sections are dominated by a dense forest of shorter trees. The area is bounded by a road on the left and a river on the right.

Notary Public in and for the
State of Wash. Residing at
Tacoma

BUSCH & WIEB - Tübingen, Bad.



Page 2

Questions

- (a) Date of incorporation 4/16/21.
 - (b) State or country Washington.
 - (c) Collector's office in which your income tax return for the taxable year was filed Tacoma, Washington.
 - (d) Is this a consolidated return? No. If so, procure from the collector Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of the consolidated income tax return.
 - (e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b) (4) of the Internal Revenue Code? (Answer "yes" or "no") yes.
 - (f) Are you a transferor or transferee upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no") no.
 - (g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no") no.
- [Sections (1), (2), and (3)—blank.]
- (h) State amount of total assets as of the end of the taxable year. (From Form 1120, page 4, line 8, last column), \$112,532.01.
 - (i) Has a constructive average base period net income under section 722 been used in computing the excess profits credit used on this return? No.
- [Sections (1), (2), and (3)—blank.]
- (j) Is any unused excess profits credit adjustment computed with the use of a constructive average base period net income? No. If the answer is "yes," attach schedule showing computation.

Schedule A.—Excess Profits Net Income Computation

Line No.	Column 1	Column 2
	Income Credit Method	Invested Capital Credit Method
1. Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 38, page 1, Form 1120).....		\$28,309.81
5. 50 per cent of interest on borrowed capital.....		598.88
7. Total of lines 1 to 6.....		\$28,908.69
16. Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 7 minus line 15).....		\$28,908.69

18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company)\$28,908.69

[Lines 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 17—blank.]

Schedule B.—Excess Profits Credit—Based on Income Page 3
[No data supplied in this schedule.]

Page 4 Schedule C.—Excess Profits Credit—Based on
Invested Capital

Equity Invested Capital at the Beginning of the Taxable Year
(See Instructions for Schedule C, lines 1 to 12, inclusive)

Line No.

1. Money paid in for stock, or as paid-in surplus, or as a contribution to capital.....\$20,000.00

[Lines 2, 3, 4 (a), (b) (c)—blank.]

- (d) Accumulated earnings and profits
(item 4 (a)) as adjusted by item 4 (b) and (c) 42,117.29

[Lines 5, 6, and 7—blank.]

8. Total of lines 1 to 7.....\$62,117.29

[Lines 9, 10, 11, 12, and 13—blank.]

14. Equity invested capital at beginning of taxable year (line 8 minus line 13).....\$62,117.29

Average Addition to Equity Invested Capital During the
Taxable Year

(See Instructions for Schedule C, lines 1 to 12, inclusive)

[Lines 15, 16, 17, 18, 19, 20, and 21—blank.]

22. Total of lines 14 and 21.....\$62,117.29

Average Reduction in Equity Invested Capital During the
Taxable Year

(See Instructions for Schedule C, lines 1 to 12, inclusive)

[Lines 23, 24, 25, 26, and 27—blank.]

(See Instructions for Schedule C, lines 28 to 40, inclusive)

28. Average equity invested capital (line 22 minus line 27)\$62,117.29

29. Average borrowed capital
(attach schedule)\$21,980.02

30. Average borrowed invested capital
(50 per cent of line 29)..... 10,990.01

31. Average invested capital (line 28 plus line 30).....\$73,107.30

32.	Total inadmissible assets	\$ 2,400.00
33.	Total admissible and inadmissible assets	\$153,424.73
34.	Percentage which line 32 is of line 33.....	1.564%
35.	Reduction on account of inadmissible assets (1.564 per cent of line 31).....	1,143.40
36.	Invested capital (line 31 minus line 35).....	\$71,963.90
37.	Portion of line 36 (not over \$5,000,000); and credit at 8 per cent.....	\$ 5,757.11
[Lines 38 and 39—blank.]		
40.	Excess profits credit—based on invested capital (total of lines 37 to 39).....	\$ 5,757.11

Shaffer Terminals Inc.

1945

Borrowed Capital

	Reductions	Balance	Days	Prod.
1/ 1/45		\$52,000.00	115	\$5,980,000.00
4/25/45	\$25,000.00	27,000.00	36	972,000.00
5/31/45	20,000.00	7,000.00	153	1,071,000.00
10/31/45	7,000.00			
				\$8,023,000.00
			Average.....	\$21,980.02

Assets

1/ 1/45.....	\$194,317.45
12/31/45.....	112,532.01
	\$306,849.46
Average.....	\$153,424.73

Inadmissible Average	\$2,400.00
Per Cent	1.564

UNITED STATES
CORPORATION INCOME TAX
For Calendar Year 1946

70 1946

For fiscal year beginning 1946, and ending 1947

WILLIAM S. JACKSON

P.O. Box 1187

Washington, D.C.

City or town, and state or district

Kind of business WILLIAM S. JACKSON

Business gross profit position
(From Schedule K)

Position of shareholder
(From Schedule K)

NORMAL-TAX NET INCOME COMPUTATION

Line and Description	GROSS INCOME	Less: Interest and Dividends	Less: Other Deductions	Net Income
1. Gross value (where inventories are an income-determining factor)				
2. Less: Cost of goods sold. (From Schedule A)				
3. Gross profit from sales				
4. Gross receipts (where inventories are not an income-determining factor)	17,749.90			
5. Less: Cost of operations. (From Schedule B)	9,869.60			
6. Gross profit where inventories are not an income-determining factor				7,880.30
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.				
8. Interest on corporation bonds, etc.				
9. (a) Interest on United States government bonds and Treasury bonds owned in excess of the specified amount of \$10,000 owned prior to March 1, 1941. (From Schedule D, line 10 or 11, if any.)				
(b) Interest on obligations of persons (individuals or the United States) owned prior to March 1, 1941. (From Schedule D, line 12, if any.)				
(c) Interest on "Foreign" bonds owned on or after December 1, 1941, and not subject to tax under Section 1, 181, or the United States of any money in foreign currency thereof. (Schedule A, line 10.)				
10. Rents				28,481.00
11. Royalties				
12. (a) Excess of net short-term capital gain over net long-term capital loss. (From Schedule C)				
(b) Excess of net long-term capital gain over net short-term capital loss. (From Schedule C)				
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)				
13. Dividends. (From Schedule E)				
14. Other income. (State nature)				
15. Total income in items 6 and 9 to 14, inclusive				37,361.30
REDUCTIONS				
16. Compensation of officers. (From Schedule F)				82,801.41
17. Salaries and wages (not deducted elsewhere)				18,387.86
18. Rent				87,278.80
19. Repairs				
20. Bad debts. (From Schedule G)				
21. Insurance				
22. Taxes. (From Schedule H)				4,783.18
23. Contributions or gifts paid. (From Schedule I)				247.00
24. Interest on life, term, or other insurance, or other annuity, or bond. (Schedule J)				8,471.16
25. Depreciation. (From Schedule J)				
26. Amortization of bonds, oil and gas wells, timber, etc. (Schedule K)				
27. Net operating loss deduction. (Schedule L)				
28. Amortization of emergency facilities. (Schedule M)				
29. All other deductions				1,281.82
30. (a) Amounts contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.				
(b) Other deductions authorized by law. (From Schedule N)				10,884.68
31. Total deductions in items 16 to 29, inclusive				138,554.51
32. Net income (Items 15 minus Item 31)				(101,193.21)
33. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (After total of items 9 to 14 and 31.)				(101,193.21)
34. Adjusted net income				(101,193.21)
35. Less: Deductions available credit (80 percent of adjusted net income E, Schedule E, but not to exceed 80 percent of item 33 above)				(80,954.57)
36. Deductible net income				(20,238.64)
TOTAL INCOME TAX				
37. Total income tax (line 36, page 8)				
38. Less: Credit for income taxes paid to a foreign country or United States possession allowed a citizen, or corporation				
39. Balance of income tax due				None

AFFIDAVIT. (See Instruction E)

We, the undersigned, resident in the precinct, or other principal officer, and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each to his knowledge and belief, a true, correct, and complete statement of the income and statement for the taxable year ended, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 15 day of June, 1947

Notary Public to and for the State of Washington

AFFIDAVIT. (See Instruction E)

I, the undersigned, being duly sworn, depose and say that the return containing any statement or statement and statement is a true, correct, and complete statement of all the information required by the law for the year for which the return has been prepared, and that I have not been convicted of a crime.

Subscribed and sworn to before me this 14 day of June, 1947

Notary Public to and for the State of Washington

Inventory at beginning of year		Salaries and wages	
Materials or merchandise bought for manufacturing or sale		Other costs (to be detailed):	
		(a) _____	
Salaries and wages		(b) _____	
Other costs per books. (Attach itemized schedule)		(c) _____	
Total		(d) _____	
		(e) _____	
Cost inventory at end of year		Total (enter as Item A, page 1)	
Cost of goods sold (enter as Item B, page 1)			

... ..

[illegible][illegible]

Schedule E—INCOME FROM DIVIDENDS				
1. Name and Address of Paying Corporation		2. Domestic Corporations Transferable Under Chapter 1, Interest Dividends Code	3. Foreign Corporations	4. Other Corporations
1	2	3	4	5
6	7	8	9	10
Totals				

Total of entries 2, 3, and 4. (Enter as item 12, page 1) 0

Schedule F.—COMPENSATION OF OFFICERS

1. Name and Address of Officer	2. Official Title	3. Time Expended in Testimony	4. Compensation & Expenses (Indicate Amount)		5. Amount of Compensation
			a. Amount	b. Expenses	
J. T. Connelley, Jackson, Mich. N. E. Connelley "	Pres. T. Pres. & Secs	1/2 Day's entire			a. 15.00 b. 0.00
Total compensation of officers. (Enter as item 16, page 1)					c. 15.00

Schedule G — BAD DEBTS (See instructions 205) (See notes)

Reactions of 2,3,4,5-tetrahydro-2H-pyran-2-one with 1,2-dicarbonyl compounds

Schedule H—TAXES. (See instructions 22)		Schedule I—CONTRIBUTIONS OR GIFTS PAID. (See instructions 23)	
Amount	Amount	Name and Full Name of Organization	Amount
Property taxes	\$ 985 65	American Red Cross, Decatur, Ga.	25 00
Income taxes	\$ 908 46	Natl. Prohibition Assoc.	20 00
County	539 52	Orthopedic Society	10 00
State	294 92	Am. Cancer Society	50 00
Total (Enter on Item 23, page 1)	\$ 4 728 15	Total (Enter on Item 23, page 1, subject to personal limitations. (See instructions 23))	\$ 350 00

Schedule J—DEPRECIATION (See instruction 8)

1. Name of Property (If facilities, state purpose of which constructed)	2. Year Acquired	3. Cost or Other Basis (Depreciable basis or value, whichever is greater)	4. Annual Policy Depreciation for the Year	5. Depreciation Allowed for Prior Years	6. Remaining Basis to be Depreciated	7. Estimated Useful Life in Years	8. Estimated Salvage Value	9. Estimated Date of Disposal	10. Estimated Date of Depreciation
1940 - 1941	1940/41	69,026.64	64	42,414.40	26,612.24	15	100	1940/41	1940/41
1942 - 1943	1942/43	5,422.76	76	3,237.85	2,184.91	15	100	1942/43	1942/43
1944 - 1945	1944/45	2,930.02	40	2,250.40	679.62	4	100	1944/45	1944/45
1946 - 1947	1946/47	77,442.49	65	47,928.65	29,513.84	15	100	1946/47	1946/47
TOTAL (Enter as Item 25, Form 11)					100,000.00				

4-10 OTHER REDUCTIONS (See Instruction 8)

OTHER DISPOSITIONS: (See instructions on back)

NORMAL TAX COMPUTATION

Line No.	Column 1	Column 2	Column 3
1. Normal-tax net income (Item 35, page 7)			
2. Portion of line 1 (in excess of \$5,000) and tax at 15 percent		15%	
3. Portion of line 1 (in excess of \$5,000 and not in excess of \$20,000) and tax at 17 percent		17%	
4. Portion of line 1 (in excess of \$20,000 and not in excess of \$25,000) and tax at 18 percent		18%	
5. Portion of line 1 (in excess of \$25,000) and tax at 21 percent		21%	
6. Total normal tax (total tax in column 3 of lines 2, 3, 4, and 5)			

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOME OF OVER \$25,000 AND FOREIGN CORPORATIONS ENGAGED IN BUSINESS WITHIN THE UNITED STATES IRRESPECTIVE OF AMOUNT OF NORMAL-TAX NET INCOME

7. Normal-tax net income (Item 35, page 7)			
8. Normal tax (24 percent of line 7)		24%	

SURTAX COMPUTATION

9. Net income (Item 31, page 11)			
10. Less: Dividends received credit (24 percent of column 9, Schedule E, but not in excess of 45 percent of Item 35, page 7 (excluding from the computation certain dividends received on preferred stock of a public utility))			
11. Dividends paid on certain preferred stock if taxpayer is a public utility			
12. Surtax net income			

CORPORATIONS WITH SURTAX NET INCOMES NOT OVER \$50,000

13. Portion of line 12 (not in excess of \$25,000) and tax at 6 percent (or 9 percent in the case of a consolidated return)		6%	
14. Portion of line 12 (in excess of \$25,000 and not in excess of \$50,000) and tax at 22 percent (or 26 percent in the case of a consolidated return)		22%	
15. Total surtax in column 3 of lines 13 and 14			

CORPORATIONS WITH SURTAX NET INCOMES OF OVER \$50,000

16. Surtax net income (line 12 above)			
17. Surtax (14 percent of line 16) (or 16 percent in the case of a consolidated return)		14%	
18. Total normal tax and surtax (line 6 or 8, plus line 15 or 17, whichever is applicable)			
19. Total tax (line 18, or the 29 of Schedule C)			

QUESTIONS

1. Date incorporated <u>4/18/21</u>	11. Is this a consolidated return? <u>No</u> (If so, procure from the collector of internal revenue for your district Form R-51, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
2. State or country <u>Washington</u>	12. If this is not a consolidated return: (a) Did the corporation exist at any time during the taxable year 50 percent or more of the taxable stock of another corporation either domestic or foreign? <u>No</u> (If so, attach schedule showing (1) Name and address, (2) percentage of stock owned, (3) date stock was acquired, and (4) the material's office in which the income tax return of such corporation, individual partnership, trust, or association for the last taxable year was filed.)
3. If incorporated in 1945, indicate whether (a) completely new business, (b) extension to previously existing business, which was organized as (1) corporation, (2) partnership, or (3) sole proprietorship, or (4) other (indicate) <u> </u> . If successor to previously existing business, give name and address of the previous business organization <u> </u>	13. Is this return made on the basis of cash receipts and disbursements? <u>No</u> If not, describe fully in separate statement <u> </u>
4. Collector's office where the corporation's return for the preceding year was filed <u>Tacoma, Washington</u>	14. Has the corporation in the return taken a deduction for any portion of wages or salaries representing an increase or decrease in value when required approval in order to be deemed useful under the Act of October 3, 1942, as amended, and regulations issued thereunder, or the establishment of rates in new plants or new departments requiring such approval? (Answer "yes" or "no") <u>No</u> If so, attach statement as required by Instructions 16 and 17.
5. Enter amount of income (or deficit) from line 24, page 1, Form 1120 for 1945 <u>\$28,309.81</u>	15. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower <u>Cost</u> If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock.
6. The corporation's books are in care of <u>Corp. officers</u> located at <u>Tacoma, Wash.</u>	16. Did the corporation make a return of information on Form 1065 or Form 1066 or Form W-2a for the calendar year 1945 (see Instructions C-11)? <u>Yes</u>
7. Enter the approximate number of stockholders at the close of the taxable year <u>3</u>	17. Has any transaction described in Instruction C-12 occurred in or after October 6, 1945? (Answer "yes" or "no") <u>No</u>
8. If the total of line 1 of Schedule M, page 4, is less than 70% of the earnings and profits for the taxable year, state reason for retention of such earnings and profits. (See Instruction 4.) <u> </u>	18. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? <u>No</u> (If so, attach statement as required by Instruction K-3.)
9. Indicate whether the corporation is a farmers' marketing or purchasing cooperative association, or a members' cooperative association <u> </u>	
10. Is the corporation a personal holding company within the meaning of section 1361 of the Internal Revenue Code? <u>No</u> (If so, an additional return on Form 1120-B must be filed.)	

ASSETS	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
1. Cash		\$ 22,054.58		\$ 22,054.58
2. Notes and accounts receivable		8,194.50		8,194.50
Less: Reserve for bad debts		24,741.99		13,246.11
3. Inventories	On hand, 1944	948.88		482.41
(a) Raw materials				
(b) Work in process				
(c) Finished goods				
(d) Supplies				
4. Investments in governmental obligations				
(a) U.S. Government bonds, notes, and debentures, and other obligations of the United States				
(b) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1945				
(c) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1946				
(d) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1947				
(e) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1948				
(f) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1949				
(g) U.S. Government bonds, notes, and debentures, and other obligations of the United States, maturing prior to March 1, 1950				
5. Other investments (specify)				
Less: Reserve for depreciation				
6. Capital assets				
(a) Depreciable assets (specify)				
Total depreciable assets		\$ 10,244.42		\$ 77,448.48
Less: Reserve for depreciation		21,481.72		24,412.62
(b) Depreciable assets				
Less: Reserve for depreciation				
(c) Land		2,000.00		1,000.00
7. Other assets (specify)		118,104.00		9,870.00
		100,000.00		7,500.00
		100,000.00		740.00
8. TOTAL ASSETS		\$ 118,104.00		\$ 12,000.00
9. Accounts payable		\$ 11,000.00		\$ 11,000.00
10. Bonds, notes, and mortgages payable				
(a) With original maturity of less than 1 year				
(b) With original maturity of 1 year or more				
11. Accrued expenses (specify)				
12. Other liabilities (specify)				
13. Surplus reserves (specify)				
14. Capital stock				
(a) Preferred stock				
(b) Common stock				
15. Paid-in or capital surplus				
16. Earned surplus and undivided profits				
17. TOTAL LIABILITIES		\$ 118,104.00		\$ 12,000.00

Schedule M—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year				
(a) Cash		\$ 10,000.00		
(b) Stock of the corporation				
(c) Other property				
2. Contributions or gifts (income taxes in excess of limitation)				
3. Federal income and excess profits taxes		15,857.82		
4. Income taxes of foreign subsidiaries or United States corporations if treated as a credit in whole or in part in their return (page 1)				
5. Federal income paid on tax-free investment income				
6. Special investment income (income in excess of the value of the property invested)				
7. Depreciation, amortization, and capital expenditures charged to expenses for the taxable year				
8. Insurance premiums paid on the life of any officer or employee whose the corporation is directly or indirectly a beneficiary				
9. Unallowable losses (losses in purchasing or carrying exempt foreign investments)				
10. Excess of capital losses over capital gains				
11. Addition to surplus reserves (list separately):				
(a)				
(b)				
(c)				
(d)				
12. Other unallowable deductions:				
(a) Dividends		244.14		
(b)				
13. Adjustments for the purposes not recorded on books (specify)				
(a)				
(b)				
(c)				
14. Excess income to earned surplus (specify)				
(a)				
(b)				
15. Federal surplus and undivided profits as shown on books (list at close of the taxable year)		\$ 21,000.00		
16. Total of lines 1 to 15		\$ 21,000.00		
17. Federal surplus and undivided profits as shown on books (list at close of the taxable year)				
18. Adjustments for the purposes not recorded on books (specify)				
(a)				
(b)				
(c)				
19. Excess income to earned surplus (specify)				
(a) Excess income to earned surplus				
(b) Excess income to earned surplus				
20. Surplus reserves (list separately)				
(a) Surplus reserves				
(b) Surplus reserves				
21. Total of lines 17 to 20				
22. Total of lines 16 to 21		\$ 21,000.00		\$ 21,000.00



Shaffer Terminals Inc.

1946

Depreciable Assets

	1/1/46	12/31/46
Autos	\$ 2,930.09	\$ 2,930.09
Machinery and Equipment	50,685.55	69,026.64
Office Equipment	5,358.78	5,492.76
	<u>\$58,974.42</u>	<u>\$77,449.49</u>

Line 4—Gross Receipts

Handling	\$55,026.18
Load and Unload	49,647.47
Storage	12,062.41
Wharfage	50,443.84
	<u>\$167,179.90</u>

Schedule B—Labor

Dock	\$34,570.33
Payroll	53,474.57
Miscellaneous	2,705.26
	<u>\$90,750.16</u>
Less Credit	12,180.56
	<u>\$78,569.60</u>

Line 29c—Other Deductions

Auto Expense	\$ 2,506.58
Crane Expense	1,565.91
General Expense	8,534.64
Insurance	1,550.87
Light, Water and Power	1,366.35
Office Expense	1,201.49
Tractor Expense	2,010.88
Telephone and Telegraph	2,407.24
Claims	48.69
	<u>\$21,192.65</u>
Less Contributions	330.00
	<u>\$20,862.65</u>

EXHIBIT D

Form 1065

United States

Page 1

Treas. Dept. Internal Revenue Service

1944

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning....., 1944, and ending....., 1945

(File this return with the Collector of Internal Revenue not later
than the 15th day of the 3d month following the
close of the taxable year)

(Print Plainly Name and Business Address of the Organization)

Equipment Associates

P.O. Box 1157

Tacoma, Washington

Business or Profession, Renting Equipment.

Item and Inst. No.

Gross Income

1. Gross receipts from business or profession.....\$41,468.32
[Item 2—blank.]

3. Gross profit (or loss) from business or profession
(item 1 less item 2)\$41,468.32
[Items 4 through 12—blank.]

13. Total income in items 3 to 12.....\$41,468.32

Deductions

14. Salaries and wages (do not include compensation
for partners)\$ 360.00
[Items 15 and 16—blank.]

17. Interest on indebtedness (explain in
Schedule F) On Loan..... 228.55

18. Taxes (explain in Schedule C)..... 523.60
[Items 19 and 20—blank.]

21. Depreciation (explain in Schedule E)..... 3,622.28
[Item 22—blank.]

23. Depletion of mines, oil and gas wells, timber, etc.
(submit schedule) Salary of Partner..... 2,400.00

24. Other deductions authorized by law
(explain in Schedule F) Genl. Exp..... 48.97

25. Total deductions in items 14 to 24.....\$ 7,183.40

26. Ordinary net income (item 13 less item 25).....\$34,284.92
[Items 27 and 28—blank.]

Schedules A and B—Blank

Schedule C.—Taxes. (See Instruction 18)

Nature	Amount
Old Age Benefit	\$ 3.60
Unemployment	9.72
Business Tax	510.28
Total (enter as item 18, page 1).....	\$523.60

Schedule D—Blank

Schedule E.—Depreciation. (See Instruction 21)

1. Kind of property, Equipment
2. Date acquired, 10/20/43
3. Cost or other basis, \$19,828.04
4. [Blank]
5. Depreciation allowed (or allowable) in prior years, \$635.30
6. Remaining cost or other basis to be recovered, \$19,192.74
7. Estimated life used in accumulating depreciation, 5
8. Estimated remaining life from beginning of year, 5
9. Depreciation allowable this year, \$3,622.28.

Equipment Associates

1944

Partners' Income

	Share of Profit	Salary	Total
S. B. Stocking, Tacoma, Wash.	\$11,428.31	\$2,400.00	\$13,828.31
K. B. Kennell, Tacoma, Wash....	11,428.31		11,428.31
W. Hopkins, Tacoma, Wash.....	11,428.30		11,428.30
	<u>\$34,284.92</u>		<u>\$36,684.92</u>

Schedule I.—Partners' Shares of Income and Credits. Page 4
(See Instruction for Schedule I)

1. Name and address of each partner, (e) Schedule [Sections (a), (b), (c), (d), (f), and (g)—blank.]

Continuation of Schedule I—Blank

Questions

1. Date of organization, October 1, 1943.
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership.
3. Was a return of income filed for preceding year? Yes. If so, to which collector's office was it sent? Tacoma, Washington.
4. Check whether this return was prepared on the cash [] or accrual [x] basis.

5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is lower None.
If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock
6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? No.
7. Was return of information on Forms 1096 and 1099, Form W-2 or Form W-2a, filed for the calendar year 1944? Yes. (See Instruction H.)

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

BUSCH & WEBB, Tacoma, Wash.
(Name of firm or employer, if any)

[Remainder of Affidavit—blank.]

EXHIBIT E

Form 1065	United States	Page 1
Treas. Dept. Internal Revenue Service		1945
Partnership Return of Income (To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.) For Calendar Year 1945 or fiscal year beginning....., 1945, and ending....., 1946 (File this return with the Collector of Internal Revenue not later than the 15th day of the 3d month following the close of the taxable year) (Print Plainly Name and Business Address of the Organization)		
Equipment Associates P.O. Box 1157 Tacoma, Washington		
Business or Profession, Renting Equipment.		
Item and Inst. No.	Gross Income	
1.	Gross receipts from business or profession.....	\$30,434.96
[Items 2 through 11—blank.]		
12.	Other income (state nature of income) :	
	Refund of Business Tax.....	133.11
13.	Total income in items 3 to 12.....	<u>\$30,568.07</u>

Deductions

14. Salaries and wages (do not include compensation for partners)	\$ 360.00
[Items 15 and 16—blank.]	
17. Interest on indebtedness (explain in Schedule F) ..	179.26
18. Taxes (explain in Schedule C)	254.85
[Items 19 and 20—blank.]	
21. Depreciation (explain in Schedule E)	4,997.56
[Item 22—blank.]	
23. Depletion of mines, oil and gas wells, timber, etc. (submit schedule) Salary as partner	2,400.00
24. Other deductions authorized by law (explain in Schedule F) General Expense	86.24
25. Total deductions in items 14 to 24	\$ 8,277.91
26. Ordinary net income (item 13 less item 25)	\$22,290.16
[Items 27 and 28—blank.]	

Page 2

Schedules A and B—Blank

Schedule C.—Taxes. (See Instruction 18)

Nature	Amount
Social Security	\$ 13.32
Real Estate	241.53
Total (enter as item 18, page 1)	\$254.85

Schedule D—Blank

Schedule E.—Depreciation. (See Instruction 21)

- Kind of property Equipment
- Date acquired, 10/23/43 1945
- Cost or other basis, \$19,828.04 \$10,319.61
- [Blank.]
- Depreciation allowed (or allowable) in prior years, \$4,157.58
- Remaining cost or other basis to be recovered, \$15,670.46 \$10,319.61
- Estimated life used in accumulating depreciation, 5 5
- Estimated remaining life from beginning of year, 4 5
- Depreciation allowable this year, \$3,622.28 \$1,375.28—Total \$4,997.56.

Equipment Associates	Partners' Income			Year 1945
	Share of Profit		Salary	Total
S. B. Stocking, Tacoma, Wash.	\$ 7,430.05		\$2,400.00	\$ 9,830.05
K. B. Kennell, Tacoma, Wash.	7,430.05			7,430.05
W. Hopkins, Tacoma, Wash.	7,430.06			7,430.06
	<hr/>		<hr/>	<hr/>
	\$22,290.16		\$2,400.00	\$24,690.16

Schedule I—Blank

Questions

1. Date of organization, 10/1/43.
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership.
3. Was a return of income filed for preceding year? Yes. If so, to which collector's office was it sent? Tacoma, Washington.
4. Check whether this return was prepared on the cash [] or accrual [x] basis.
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is lower None.
If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.....
6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "yes" or "no") No.
7. Was return of information on Forms 1096 and 1099, or Form W-2a, filed for the calendar year 1945? Yes.
(See Instruction H.)

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ GEO. J. VANN, 3/14/46.

BUSCH & WEBB, Tacoma, Wash.

/s/ S. B. STOCKING, 3/14/46,
P.O. Box 1157, Tacoma.

[Remainder of Affidavit—blank.]

EXHIBIT F

Form 1065

United States

Page 1

Treas. Dept. Internal Revenue Service

1946

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1946

or fiscal year beginning....., 1946, and ending....., 1947

(File this return with the Collector of Internal Revenue not later
than the 15th day of the 3d month following the
close of the taxable year)

(Print Plainly Name and Business Address of the Organization)

Equipment Associates

P.O. Box 1157

Tacoma, Washington

Business or Profession, Renting Equipment.

Item and Inst. No. Gross Income

[Items 1 through 7—blank.]

8. Rents\$11,725.32

[Items 9 through 12—blank.]

13. Total income in items 3 to 12.....\$11,725.32

Deductions

14. Salaries and wages (do not include compensation
for partners)\$ 360.00

[Items 15 and 16—blank.]

17. Interest on indebtedness (explain in Schedule E;
do not include interest on capital invested in the
business by any partner)..... 69.74

18. Taxes (explain in Schedule B)..... 598.74

[Items 19, and 20—blank.]

21. Depreciation (explain in Schedule D)..... 3,055.29

22. Amortization of emergency facilities
(attach statement) Misc. Exp. 1.46

[Item 23—blank.]

24. Other deductions authorized by law
(explain in Schedule E) Salary of Partners..... 1,050.00

25. Total deductions in items 14 to 24.....\$ 5,135.23

26. Ordinary net income (item 13 less item 25).....\$ 6,590.09

[Items 27 and 28—blank.]

Schedule A—Blank

Schedule B.—Taxes. (See Instruction 18)

Nature	Amount
O.A.B. Taxes	\$ 3.60
Unemp. Taxes	9.72
P. Prop.	507.76
Business	77.66
Total (enter as item 18, page 1).....	\$598.74

Schedule C—Blank

Schedule D.—Depreciation. (See Instruction 21)

1. Kind of property Equipment and Equipment sold at book value
 2. Date acquired 10/1/43
 3. Cost or other basis \$30,147.65 (\$19,828.04)
- [Items 4, 6, 7, and 8—blank.]
5. Depreciation allowed (or allowable) in prior years \$9,255.14 (\$9,214.55)
 9. Depreciation allowable this year \$3,055.29.

Schedules E and F—Blank

Equipment Associates 1946

Partners' Income

	Share of Profit	Salary	Total
S. B. Stocking, Tacoma, Wash.	\$2,196.69	\$1,050.00	\$3,246.69
K. B. Kennell, Tacoma, Wash.	2,196.70		2,196.70
W. Hopkins, Tacoma, Wash.	2,196.70		2,196.70
	<u>\$6,590.09</u>	<u>\$1,050.00</u>	<u>\$7,640.09</u>

Schedule G—Blank

Questions

1. Date of organization 10/1/43.
2. [Blank.]
3. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership.
4. Was a return of income filed for preceding year? Yes. If so, to which collector's office was it sent? Tacoma, Washington.
5. Check whether this return was prepared on the cash [] or accrual [x] basis.

6. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is lower None.
If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.....
7. Is any member of the partnership the spouse, son, or daughter of any other member? (Answer "Yes" or "No") No.
8. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No.
9. Was return of information on Forms 1096 and 1099, or Form W-2a, filed for the calendar year 1946? Yes.
(See Instruction H.)

Schedule H.—Balance Sheets

Page 4

	Assets	Beginning of taxable year		End of taxable year
		Amount	Total	Amount
1.	Cash		\$ 8.17	\$ 212.53
2.	Notes and accounts receivable (less reserve)		4,704.88	1,350.00
5.	Depreciable assets Equip.	\$30,147.65		\$10,319.61
	Less: Reserve for depreciation	9,255.14	20,892.51	3,095.88
8.	Total assets		<u>\$25,605.56</u>	<u>7,223.73</u>
				<u>\$ 8,786.26</u>
Liabilities				
9.	Accounts payable		\$ 33.15	\$ 32.25
10.	Notes and mortgages payable		5,250.00	
13.	Partners' capital accounts:			
	(a) S. B. Stocking	\$ 6,774.14		\$ 2,918.00
	(b) K. B. Kennell	6,774.13		2,918.00
	(c) W. Hopkins	6,774.14		2,918.01
			20,322.41	8,754.01
14.	Total liabilities		<u>\$25,605.56</u>	<u>\$ 8,786.26</u>

[Items 3, 4, 6, 7, 11, and 12—blank.]

Schedule I.—Partners' Shares of Income and Credits.

(See Instruction for Schedule I)

1. Name and address of each partner Schedule.

Continuation of Schedule I—Blank

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ GEO. J. VANN.

BUSCH & WEBB, Tacoma, Wash.

[Remainder of Affidavit—blank.]

EXHIBIT G

Form 1065

United States

Page 1

Treas. Dept. Internal Revenue Service

1947

Partnership Return of Income

(FINAL)

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1947

or fiscal year beginning....., 1947, and ending....., 1948

(File this return with the Collector of Internal Revenue not later than the 15th day of the 3d month following the close of the taxable year)

(Print Plainly Name and Business Address of the Organization)

Equipment Associates

P.O. Box 1157

Tacoma, Washington

Business or Profession, Renting Equipment.

Item and Inst. No. Gross Income

[Items 1 through 7—blank.]

8. Rents\$ 912.72

[Items 9 through 12—blank.]

13. Total income in items 3 to 12.....\$ 912.72

Deductions

14. Salaries and wages (do not include compensation for partners)\$ 180.00

[Items 15, 16, and 17—blank.]

18. Taxes (explain in Schedule B)..... 853.50

[Items 19 through 23—blank.]

24. Other deductions authorized by law (explain in Schedule E).....	2.29
25. Total deductions in items 14 to 24.....	\$ 1,035.79
26. Ordinary net income (item 13 less item 25).....	\$ (123.07)
[Items 27 and 28—blank.]	

Schedule A—Blank

Page 2

Schedule B.—Taxes. (See Instruction 18)

Nature	Amount
Personal Property	\$823.37
Business	23.47
Social Security	6.66
Total (enter as item 18, page 1).....	\$853.50

Schedules C, D, E, F, and G—Blank

Page 3

Questions

1. Date of organization 10/1/43.
2. [Blank.]
3. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership.
4. Was a return of income filed for preceding year? Yes. If so, to which collector's office was it sent? Tacoma, Washington.
5. Check whether this return was prepared on the cash [] or accrual [x] basis.
6. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is lower None.
If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.....
7. Is any member of the partnership the spouse, son, or daughter of any other member? (Answer "Yes" or "No") No.
8. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No.
9. Was return of information on Forms 1096 and 1099, or Form W-2a, filed for the calendar year 1947? Yes.
(See Instruction H.)

Schedule H.—Balance Sheets

Page 4

		6/30/47 before liquidation	
		End of taxable year	Total
Assets		Amount	
1. Cash		\$ 212.53	\$ 181.24
2. Notes and accounts receivable (less reserve)		1,350.00	
5. Depreciable assets Equip.	\$10,319.61	\$10,319.61	
Less: Reserve for depreciation	3,095.88	3,095.88	7,223.73
8. Total assets		\$ 8,786.26	\$ 7,404.97
Liabilities			
9. Accounts payable		\$ 32.25	74.03
11. Accrued expenses			
13. Partners' capital accounts:			
(a) S. B. Stocking	\$ 2,918.00	\$ 2,443.65	
(b) K. M. Kennell	2,918.00	2,443.64	
(c) W. Hopkins	2,918.01	2,443.65	7,330.94
14. Total liabilities		\$ 8,786.26	\$ 7,404.97

[Items 3, 4, 6, 7, 10, and 12—blank.]

Shaffer Terminals, Inc., vs.

Schedule I.—Partners' Shares of Income and Credits.

(See Instruction for Schedule I)

1. Name and address of each partner	3.*
(a) S. B. Stocking, Tacoma, Wash.	\$ 25.65
(b) K. M. Kennell, Tacoma, Wash.	(74.36)
(c) W. Hopkins, Tacoma, Wash.	(74.36)
Totals.....	\$ (123.07)

* Ordinary net income (item 26, page 1) less any partially tax-exempt interest included in item 7, page 1.

[Columns Nos. 2 and 4—blank.]

Continuation of Schedule I

Partnership Liquidated as of 6/30/47.

Affidavit. (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

BUSCH & WEBB, Tacoma, Wash.
(Name of firm or employer, if any)

[Remainder of Affidavit—blank.]

Filed T.C.U.S. July 5, 1950.

Before the Tax Court of the United States

Docket No. 26127

In the Matter of:

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

TRANSCRIPT OF HEARING

Room 813, United States Court House

Seattle, Washington

July 5, 1950—2:00 P.M.

(Met pursuant to notice.)

Before: Honorable Luther A. Johnson,

Judge.

Appearances:

Henry C. Perkins,

Of Messrs. Henderson, Carnahan, and

Thompson, 1410 Puget Sound Bank

Building, Tacoma, Washington.

Appearing for the Petitioner.

John D. Picco,

Appearing for the Respondent. [2*]

The Court: The Clerk will call the next case.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Clerk: Docket No. 26127, Shaffer Terminals, Inc. State your appearances, gentlemen, please.

Mr. Perkins: My name is Henry C. Perkins.

Mr. Picco: Counsel for Respondent, John D. Picco.

The Court: Very well.

Mr. Picco: Your Honor, I have a stipulation of facts which I am presenting for filing. I think it might be feasible at the present time to again do as we did this morning, to indicate what exhibits are attached to the stipulation.

The Court: That is a good practice. Let counsel enumerate the exhibits. How many exhibits are there attached to the stipulation of facts?

Mr. Picco: I think about ten, your Honor.

The Court: The stipulation of facts, together with the ten exhibits attached thereto, will be received in evidence, and counsel for the Respondent will now enumerate for the record what the exhibits consist of.

(Whereupon, stipulation of facts, together with ten exhibits attached thereto were received in evidence.)

Mr. Picco: We have attached to this stipulation Exhibit 1, which is a partnership agreement dated September [3] 22, 1943, actually it was executed on October 8, 1943, and it relates back to September 22, 1943.

The Court: What is the style of the partnership?

Mr. Picco: Equipment associates.

The Court: That is Exhibit 1?

Mr. Picco: Yes.

Exhibit 2, your Honor, is a sale and lease agreement. That is the title of it. This was executed October 8, 1943, relating back again to September 30, 1943.

The Court: Sale and lease?

Mr. Picco: Sale and lease agreement.

The Court: Who is the grantor?

Mr. Picco: Shaffer Terminals is the lessor—I mean Shaffer Terminals is the lessee.

The Court: Lessee, yes.

Mr. Picco: And Equipment Associates is the lessor.

Exhibit 3 is a list of rentals paid by Shaffer Terminals, Inc., to the account of leased equipment.

The Court: I think it might be better if we preceded this with a statement of the issues.

Mr. Picco: We can still do that, your Honor, if you desire, although I think it will work out about the same.

The Court: You go ahead, but I think it would have been a lot more logical.

Mr. Picco: Exhibit 3 is a list of rentals paid [4] by Shaffer Terminals, Inc., on account of leased equipment.

Exhibit 4 is a summary of the partnership investments and withdrawals referring to Equipment Associates.

Exhibit 5 is a summary of working capital, having reference to Shaffer Terminals.

Exhibit A, your Honor, is the corporate income tax return for the year 1944, Shaffer Terminals.

The Court: In what year—is that the year involved?

Mr. Picco: That is correct. 1944 and 1945.

Exhibit B, the same for the year 1945.

Exhibit C is the corporate return for the year ending 1946, Shaffer Terminals.

The Court: Is the return made on the calendar year basis, or the fiscal year basis?

Mr. Perkins: The calendar year.

Mr. Picco: Yes, your Honor. Exhibit D is the three year original income tax return. Exhibit D is a photostatic copy of the partnership return for 1944.

Exhibit E is the partnership return for the year 1945.

Exhibit F, same for the year 1946.

And Exhibit G, the last exhibit, same for its final return, which is the period about six months prior to June 30, 1947. [5-6]

I think these are the only exhibits that will be presented.

Mr. Perkins: I believe it is all.

The Court: Now, if you will state what the issues are.

Mr. Perkins: I am ready to make my opening statement now.

The Court: Petitioner's counsel may be heard first.

Opening Statement on Behalf of the Petitioner
By Mr. Perkins:

I might state that the name of Mr. Anderson appears upon the petition. He has been ill recently, and couldn't be here today.

The name of George A. Bush, appearing also, also is on the petition. Mr. Bush is here as a certified public accountant. The returns were all made under his direction and his office, and any questions about figuring is in his department.

This case involves the deductibility of the return—of rentals after repaid by the Petitioner, for the use of equipment during the years 1944 and 1945, totaling \$61,000. The Commissioner has disallowed this item for both years, and that results in a proposed deficiency for the two years.

The Court: On what ground did the Commissioner disallow it? [7]

Mr. Perkins: The ground was that they were not properly deductible as business expense.

The Court: Is there any question about them being rented?

Mr. Perkins: No, there is no question about the fact that the money was paid.

The Court: **For rental?**

Mr. Perkins: That is right. He raised the question whether or not it was really a deductible item. The original case was McGovern and Hatton, that was a case where the court found that there was no real lease between the corporation and the resident.

The Court: I recall.

Mr. Perkins: That was the original idea under which it was disallowed. I believe now the government will rely on cases like the Skeb case, that has

resulted in the proposed deficiency, which is the basis for this case.

Shaffer Terminals, the Petitioner, were in the business of operating terminals, warehouses, at Tacoma. During the period here involved, 1944 and 1945, and 1942 and 1943, they were engaged in handling freight for—primarily for the Army, Navy, Lend-Lease equipment to Russia, et cetera. The amount of business that they were doing was increasing rapidly, they needed more equipment, especially where—what is called the lift truck, they were renting these lift trucks [8] from the Army and other stevedoring companies, but the availability of these machines was becoming more precarious. The people they were renting them from were asking when they could get them back, et cetera, and those conditions just increased rapidly.

They decided that they had to get a more available source of this equipment. They applied for priorities in the name of Shaffer Terminals, knowing that Shaffer Terminals had a standing to get the priorities during the war, but they never considered that Shaffer Terminals would ultimately buy them, because their working capital was already been—already being stretched too far. Due to large accounts receivable, and they are all listed in the exhibits attached to the stipulation, and they were in the 90 per cent bracket of income tax, which made it not feasible for them to expect to pay back out of earnings. But feeling that the important thing was to get the equipment, they applied for the priorities, and obtained the priorities.

When the time came to pay for the equipment, they had consulted the banker, whose deposition was taken, and will be in evidence, and as a result of that, Shaffer Terminals wrote the checks.

Before the checks returned to Tacoma for payment, the new partnership, composed of four stockholders of Shaffer Terminals, had given the Shaffer Terminals a check [9] for the full amount of the machines, plus freight.

The Court: What is the name of the three partners?

Mr. Perkins: Equipment Associates. A copy of the partnership agreement is attached to the stipulation. In other words, while a Shaffer check was used in two cases, the check was covered before it came back for payment. In the third case, there was a lapse of about three weeks, and at that time Shaffer Terminals had to carry a large reserve for income tax, et cetera.

The only reason the Shaffer Terminals appears in it as buying the lift trucks, they could get the priorities easily. The petitioner never used these except as lessee, under the agreement attached to the petition.

Now, on page 2 of the stipulation there is a list of shareholders. There were originally four. R. Shaffer died. There were Stocking, K. M. Kennell, and W. Hopkins, were the three stockholders, during this period of 1944 and 1945, and their stockholdings varied from Stocking's 78 per cent, down to Mr. Hopkins' 8 per cent. Those three were also the three partners. They shared the partnership income

equally, except for the part that Mr. Stocking received a salary for managing the affairs of the partnership of \$200 per month.

Now, the rentals which were paid by Shaffer Terminals to Equipment Associates for the use of this [10] equipment——

The Court: In the case here, it involves as to whether or not that was rentals?

Mr. Perkins: That is the question. Were these proper deductions for business expense. The size of those rentals were determined by tariffs on file with the Public Service Commission of the State of Washington, the same amount that every other company was paying for similar equipment, and the same amount that Shaffer Terminals had been paying the Army for the same equipment before acquiring their own. That is the question, whether or not those rentals which totaled over \$61,000, were properly deductible from the income tax for those years.

That is the only question involved here. I wonder if I made clear that the partners and shareholders were the same, but their interests were different?

The Court: I understand.

Mr. Perkins: They were equal, Sam Stocking, 78 per cent; Keller, 14 per cent; Hopkins, 8 per cent, but they shared equally, except for the fact that Mr. Stocking was paid a salary of \$200 a month to manage.

I would also add that a salary of \$30 a month was paid to Mr. E. A. Seaton for keeping the books. He—E. A. Seaton was also the bookkeeper for the Petitioner.

The affairs of the partnership were conducted in [11] the Shaffer Terminals office, for which no rent was paid.

Mr. Picco: Your Honor, I think he has covered the case very well. We have here the Petitioner, the corporation Shaffer Terminals, they sold the equipment in question to a partnership composed of the sole stockholders and sole officers of that corporation, doing business as a partnership formed in that year, September, 1943.

In that same transaction, covered by the same agreement——

The Court: Two tax periods, 1944 and 1945.

Mr. Picco: In the same transaction, covered by the agreement in 1941 or 1942, this partnership leased back the equipment to the Petitioner.

We have a case that comes squarely within the Arnston decision. I think you are quite familiar with that. The case was presented in the stipulation and comes within the Arnston case, probably the Inger case, and a few others, but definitely the Arnston case, and the Inger case.

I think that should be sufficient to let your Honor know the type of case you have before you. Outside of that, I think we are ready for testimony.

K. M. KENNEL

called as a witness for and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows: [12]

Direct Examination

By Mr. Perkins:

The Clerk: Will you state your name, please?

The Witness: K. M. Kennell.

The Clerk: And your address?

The Witness: 3715 East L Street, Tacoma.

Q. (By Mr. Perkins): What is your business, Mr. Kennell?

A. Vice president of Shaffer Terminals.

Q. And were you vice president in 1942 and 1943?

A. No, sir. At that time I was secretary, until after the death of Mr. Shaffer in 1943, then I became vice president.

Q. You became vice president in 1943, and you have been such ever since? A. That is right.

Q. In the year 1942, of what did your business consist?

A. In the first part of 1942, business was—it dropped off to almost nothing, because of the war.

The Court: What business was that company engaged in?

Q. Describe the type of business.

A. We were a marine terminal and a wharf freight, operating, loading ships. During the first six months of 1942, [13] business dropped off almost

(Testimony of K. M. Kennell.)

to nothing, because of interruption to normal freight routes, due to the war. In the beginning of July, 1942, we started handling different cargoes, and for the Alcan Highway, and Lend-Lease cargo destined to Russia. That continued through 1942, and on through 1943, and subsequent years.

Q. Was your business increasing?

A. Business increased then very rapidly.

The Court: When did the increase begin?

The Witness: In the middle of 1942.

Q. And did it increase up through the fall and winter?

A. It increased continuously from that time on.

Q. What was your situation with respect to equipment for loading?

A. At the beginning of the Lend-Lease cargo, we required a great deal of additional equipment. The Army cargo for the Alcan Highway didn't require so much new equipment.

The Court: What kind of cargo was loaded primarily at that time?

The Witness: It was about half and half.

The Court: What was the nature of the cargo?

The Witness: The cargo for Lend-Lease started out to be foodstuffs, and then stretched into trucking equipment, and all types of trucks, machinery, almost [14] everything imaginable.

Q. Will you tell what the situation was with respect to equipment necessary for unloading this freight?

A. When I undertook the Lend-Lease operation,

(Testimony of K. M. Kennell.)

we had practically no equipment of the type that was necessary to handle it, and we simply had to go to mechanically handling it. That meant the requisition of the necessary pallet boards to go with the type of operation. We started out with belt pallet boards, and we had to get lift trucks.

The Court: You started with what?

The Witness: Pallet boards.

Q. Will you explain what those are?

A. Those are boards that cargo is loaded when it comes through from a car, and then are transferred by the fork truck to the ship side and then into the hold of the ship. They are a handling device for economy in handling.

We had no lift trucks, and at that time application was made to a department of the Army for lift trucks for that operation.

The Court: What did you call those?

The Witness: Lift trucks.

The Court: Explain those things, because the court doesn't know much about sea shipping.

The Witness: The Army granted us the use of three lift trucks, which we used for a considerable period [15] of time. They rented us—they rented those to us, but with the understanding that they were in temporary assignment until we could acquire equipment of our own.

Q. What rental did you pay to the Army?

A. We paid the standard rental of three dollars per hour.

Q. That is the standard tariff?

(Testimony of K. M. Kennell.)

A. That is the tariff charges. In addition, we had to guarantee them a specific rental allowance per month, as well, used or unused.

The Court: The agreements about those matters are tied in, in the stipulation of facts, weren't they?

Mr. Perkins: Yes, the stipulation says that the rentals paid were the tariff rentals on file.

In other words, there are some cases where there was some question about the amount of rental paid, and I just wanted to leave that and have that checked.

Q. (By Mr. Perkins): You were telling about the difficulty with equipment. Go ahead.

A. We acquired these trucks, but it was with the understanding that they were temporary only, until we could acquire equipment of our own.

During the period that we had them, we were continually under pressure to return them to the Army, for use elsewhere, but we had to have them in the work to take care [16] of the cargo destined to get to Russia.

Q. When, if at all, did you start making plans to acquire another source of machinery?

A. Early in the year of 1943.

Q. Yes.

A. I knew that we were going to be faced with outmoded business, because half of the terminals by one of the shipyards was a warehouse and it was the intention of the army to reclaim that and put it under contract operation to handle Lend-Lease cargo. We knew from that, as well as the materials,

(Testimony of K. M. Kennell.)

that we would probably be handling, that we had to have new equipment. During that time they were leasing some equipment from stevedores, all we could get then, or, however, that source was all together too unsatisfactory, because the stevedores were entering into contracts for handling various types of operations in various places, and would require their own equipment.

Q. Now, may I just ask one question: You refer to all the active members—— A. Yes.

Q. ——at that time, with whom you discussed matters?

A. The entire group of us, Mr. Shaffer and Mr. Stocking and Mr. Hopkins and myself, primarily Mr. Stocking and myself.

Q. Mr. Shaffer has died since?

A. Yes. [17]

The Court: Where are you located? Where was this shipping carried on?

The Witness: Tacoma, Washington.

Q. You go ahead, continue with the story about the equipment. You had arrived at the point where you had decided that you had to have another source of equipment.

A. We began to consider ways and means by which equipment could be acquired, but knowing our position as far as the limited capital of the corporation went, we could not see a possibility of the corporation itself acquiring this equipment. We discussed several means by which the equipment

(Testimony of K. M. Kennell.)

might be acquired, but the pressing thing before us always was the fact that we had to have it.

And before we had come to any conclusion as to how we were going to finance the equipment, we had to apply for priorities and get the equipment rolling, because time was of the essence.

Q. Did you apply for those priorities?

A. We applied for those priorities in April of 1943. They were granted in the same month, as I recall it. And delivery was obtained of the equipment, three pieces of equipment, the latter part of September of that year.

Q. Can you tell when you decided to organize the partnership, which you did ultimately organize, and the circumstances under which you decided that? [18]

A. As I recall it, our thinking on the partnership crystalized in August of 1943, but until that time we had been discussing various ways of financing it, including the consideration of getting outside capital to invest in them and from whom we might rent.

Q. Did you consider having Shaffer Terminals borrow the money?

A. Yes, that was considered and abandoned because we were already borrowing as heavily as we could hope to, from the bank, because of the tremendous amounts of accounts receivable we were having to carry.

Q. What was the capital of the corporation at that time, \$20,000?

(Testimony of K. M. Kennell.)

Mr. Perkins: It will be in the stipulation.

Q. (By Mr. Perkins): At that time, did you consult Mr. Barry, with respect to this problem?

A. That was done.

Q. And as a result of that, the partnership was organized?

A. Out of the thinking that we had done on all related subjects, we decided finally that a partnership was the solution to our problem.

Q. Did you consider that the Shaffer Terminals did buy this equipment? A. No, sir. [19]

Q. Did Shaffer Terminals ever use this equipment before the sale and lease agreement was made?

A. No, it did not.

Q. At that time, who was your attorney?

A. Mr. Henderson.

Q. And who attended to your tax returns, your accountant? A. Mr. Bush.

Q. Did you consult either of them with respect to any tax problem involved in this arrangement?

A. Didn't even consider that.

Q. Did you own the premises at Tacoma where you operated the terminal?

A. No, sir; they were on leases.

Q. On leases. I believe I have asked this question. I just want to clarify it. Did you at any time ever consider that Shaffer Terminals did buy this equipment for their own account? I believe that is a question I asked before. A. No, sir.

Q. Will you explain just again why you never considered that?

(Testimony of K. M. Kennell.)

A. The answer was rather obvious. The corporation's net returns in any year during that period could not possibly sustain the investment that would be necessary in equipment. We had no reserves from which to draw, in addition to [20] which, we were buying equipment which was to be used in the war effort. A use for it might be ended at any time. It was in this Lend-Lease operation with Russia, to Vladivostok and similar points on the Pacific Coast of Siberia. The threat of the Japanese interrupting that Lend-Lease line was ever present, and no one knew from one day to the next whether that line was going to be permitted to stay open or not.

Mr. Perkins: I believe that is all.

Cross-Examination

By Mr. Picco:

Q. I have just one preliminary question before going into cross-examination, and that is as to the equipment. In the stipulation we state here that prior to September 22, 1943, that is when the partnership was formed, Petitioner had purchased and owned a considerable amount of this equipment. I want you to go into that slightly. You did have some equipment prior to the formation of the partnership, did you not?

A. The Shaffer Terminals had equipment of various types that it acquired through the years of its operation.

(Testimony of K. M. Kennell.)

Q. You needed additional equipment at this time? A. Yes, sir; and of a new type.

Q. Thank you. Now, at the time that the partnership was formed, in September of 1943, Shaffer Terminals was not in any financial difficulty, was it?

A. No. [21]

Q. In fact, its cash position was rather good in September of 1943, was it not?

A. I would have to review all the statements there to elaborate on that, but our business was up and down from one month to another, or we changed very radically from one month to another.

Q. The first equipment that was transferred from the Shaffer Terminals to the partnership cost around \$9,500? A. That is right.

Q. Now, it is true, isn't it, that your cash position at that time was \$28,000, or over that?

A. It is there in the stipulation, sir. I don't recall the figures exactly.

Q. Also, that the accounts receivable stated by the company on the contracts at that time, exceeded \$134,000? A. That is substantially correct.

Q. You had up to that particular time sufficient equipment with *which you* to comply with your commitments under the war contracts, did you not?

A. No, we did not. We were working with our bare hands.

Q. You needed additional equipment?

A. And we had to have equipment.

Q. You needed \$9,500 more additional equipment at that particular time? [22]

(Testimony of K. M. Kennell.)

A. We needed more than that.

Q. But that is what you did buy?

A. That is right.

Q. You had war contracts that were promising to keep income coming in for several years at that time?

A. No, we had no contracts.

Q. Weren't you operating under the war contracts?

A. We operated under no contracts, sir.

Q. What sort of arrangement did you have with the government?

A. We simply had the arrangement under which we handled cargo they sent to us day by day.

Q. But you expected and contemplated and expected that this arrangement would continue during the duration of the war period, did you not?

A. In part, that may be true, sir, but as I explained in answer to the question a moment ago, no one knew how long the Russian supply line would be left open, that was in the hands of the Japanese.

Q. At the time you first formed this partnership, there was no necessity, was there, to borrow money as far as Shaffer Terminals was concerned, that is, in order to purchase the equipment?

A. Yes, I think there was.

Q. Well, you just got through saying that the cash [23] position was over \$28,000 at that time, and the equipment didn't cost more than \$9,500?

A. That is true, sir, but at the same time I also pointed out that the fluctuations in the amounts that were due us and our cash position——

(Testimony of K. M. Kennell.)

Q. You also stated that you had war priority, that is, Shaffer Terminals had war priority necessary to obtain any equipment they might need in this emergency?

A. We could get the priority because of the work we were doing.

Q. Now, this new partnership that you formed was not in that sort of position, was it? It couldn't get the priority?

A. I found out that we could have gotten the priority, but it would have taken more time.

Q. You don't know whether it could have gotten the priority?

A. Well, knowing that other cases of similar kind did get it, I assume that we could.

Q. In any event, in all these three transfers, during the two years involved here in 1943, and in March of 1944 and in June of 1945, the priorities were obtained by Shaffer Terminals, they bought the equipment and transferred it over to the Equipment Associates, a partnership. Is that right? [24]

A. That is right.

Q. Why was it necessary to form this partnership, if all the answers you have given me are true?

A. The answer, Mr. Picco, is quite obvious. That is, that our net position was not going to be sufficient to permit us to finance this equipment, plus other equipment that was contemplated with other business that was being considered for us by the Army and others, and the necessity of tying up so

(Testimony of K. M. Kennell.)

much of our funds in the nature of accounts receivable and other forms of working capital.

In other words, the Shaffer Terminals did acquire a certain amount of subsidiary equipment on its own account.

Q. Actually, wouldn't it have been feasible for Shaffer Terminals to purchase its own equipment, rather than to deal through this partnership?

A. No.

Q. You know, do you not, that during the years 1944 and 1945, the tax years, rentals paid by the Shaffer Terminals for the use of this equipment exceeded over \$77,000? A. That is right.

Q. And the purchase price of this equipment did not exceed \$30,000?

A. By the same token, the amount that we paid the Army for similar equipment at the same times was in the same proportion— [25]

Q. That is not in response to my question. My question is, it would have been cheaper to purchase the equipment, for Shaffer Terminals to purchase the equipment, rather than to deal through this partnership?

A. If the Shaffer had been—if the Shaffer Terminals had been financially in a position to do so.

Q. You knew at the time of these transfers that the cash position, the accounts receivable were large in relation to the price paid for the equipment?

A. That is true, sir, but we had no way of knowing when those accounts receivable would be paid, and I had no way of knowing how much the banks

(Testimony of K. M. Kennell.)

would go with us to carry our accounts receivable.

Q. On the basis of \$134,000 accounts receivable, it was necessary to borrow, you mean, you don't think your banker would have loaned \$9,500 to buy your equipment, is that what you want us to believe?

A. That is not the point, sir. The point is, how much would they loan on our total needs?

Q. Weren't you thinking, when you say Shaffer Terminals wasn't in a position to finance you, weren't you thinking in terms of the end of the year, after taxes had been paid?

A. At the end of the year; yes, sir; after the taxes were paid, there would not be enough to carry the finances.

Q. Actually, is it not true that the only reason for [26] forming that partnership was to operate the excess profit tax from these payments?

A. Had that been our intention, sir, we would have changed our corporation to a partnership and taken the benefit of it on all our other transactions.

Q. That was one of the reasons for the formation of the partnership, was it not?

A. A matter of being able to accumulate sufficient funds to buy equipment and to carry on.

Q. Now, as far as the partnership is concerned, how much capital was contributed by the individual partners?

A. In the first instance, \$2,500 each.

Q. That is \$10,000 total capital?

A. That is right.

(Testimony of K. M. Kennell.)

Q. Now, it is true, is it not, that the Shaffer Terminals on that particular day had three times more cash than the partnership had?

A. Are you looking at the amounts that we had opposite that cash?

Q. Yes, I am.

A. \$28,000 would be three times that much.

Q. Just for the purpose of getting it before the judge, on September 30, 1943, your bank balance was \$28,683. This is Shaffer Terminals. Your accounts receivable were \$134,756. Your debts payable were \$35,000. Your accounts payable were [27] \$37,538. Then some reserves for social security and income tax of \$13,293. The answer is that the Shaffer Terminals had two or three times more cash than the cash capital of the partnership on that date, did it not?

A. That is true, but we also had liquid liabilities against that.

Q. I wonder if you would tell us a little about the source of this capital?

A. Well, in my own instance, I borrowed roughly two-thirds of it, and had the rest myself.

Q. Do you know about whether or not the other two, Mr. Stocking and Mr. Shaffer, whether they had to borrow?

A. I know that Mr. Stocking had to borrow part of his. I am under the impression that Mr. Shaffer also borrowed part of his. Mr. Hopkins, I think, did not.

Q. Did you consider at this time having the

(Testimony of K. M. Kennell.)

Shaffer Terminals borrow the \$9,500 that was necessary to buy the equipment?

A. We had discussed that with the bank.

Q. There was no question that that loan could have been obtained through the bank, is there?

A. There is a question.

Q. In what regard?

A. As a matter of fact, the bank definitely indicated that they were not in a position money beyond what loans they [28] were carrying for this equipment. It was a capital loan, and they couldn't see where we could own the money to get it back.

Q. For one thing, it wouldn't have been necessary for Shaffer Terminals to borrow any money at that particular time, that is correct, is it not?

A. I don't think that is true, because we were already borrowing \$35,000, according to the statement you have, sir.

Q. The statement that is in here is that you had at that time over \$28,000 in cold cash?

A. Our pay rolls in any week would eat up half of that.

Q. But at this particular time, you did have the cash?

A. On that day, at the end of the month, that is true. The statements showed it on one day.

Q. Did your banker state he wouldn't loan to the corporation, knowing that the liquid position of this corporation was as I have just recited it?

A. He didn't say he wouldn't loan at all. He said it wasn't the proper loan to make at that time.

(Testimony of K. M. Kennell.)

Q. Would you please tell us how you were able to pay back your loan?

A. Yes. I paid it back out of my salary, and some of it out of the earnings of the [29] partnership.

Q. The earnings of the partnership comprised in the main, in fact, practically all of the earnings of the partnership comprised rental payments made by Shaffer Terminals, did they not?

A. Practically all.

Q. So in truth, the capital contribution was borrowed from the bank and paid out of the rental payments made by the corporation, the Shaffer Terminals, the petitioner in this case?

A. In part.

Q. I wonder if you would tell us a little about what the partnership did during these two years that are in question. What did the partnership have to do?

A. Its business was to acquire and supply the equipment.

Q. It was not contemplated, was it, that the partners were to devote any appreciable time to the business of the partnership?

A. No, it was not.

The Court: I didn't get the answer.

The Witness: It was not.

Q. What actually are some of the duties of the partnership in connection with their business? The business of the partnership?

A. The business of Mr. Stocking, it was his

(Testimony of K. M. Kennell.)

business [30] to manage the affairs of the partnership, make any necessary banking arrangements and other affairs of that sort, administering the business, looking after the details of the contracts, and other things that were to be entered into.

Mr. Picco: Is Mr. Stocking going to testify here today?

Mr. Perkins: Yes.

Mr. Picco: I will ask him further along that line.

Q. (By Mr. Picco): Why was Mr. Stocking selected as the man to manage the partnership?

A. Probably logical because at the moment he had more time than any of the rest of us to devote to it.

Q. The duties involved in managing the partnership could have been handled by either yourself, or Mr. Hopkins, for that matter, too, could they not? A. Presumably.

Q. Now, this particular equipment was used exclusively by Shaffer Terminals?

A. It had first priority, it was not used exclusively. There were instances where it was rented to other people. When the Shaffer Terminals had no need for it.

Q. Do you remember any of those instances?

A. There is a statement in these stipulations, I believe, to the effect that rentals acquired from outside sources—— [31]

Q. That equipment could not have been used by

(Testimony of K. M. Kennell.)

any other person without the permission of Shaffer Terminals?

A. He arranged the contract under which the equipment was leased to Shaffer Terminals in that manner, because of the fact that it protected the priorities.

Q. So that written approval, or at least approval and consent was necessary before anybody else could use that equipment? A. That is right.

Q. The partnership, equipment associates, was never intended, was it, to have unrestricted right to control over the equipment?

A. I don't know that I understand your question, sir.

Q. The question is this: This equipment was to be used by Shaffer Terminals at all times during the period of the sale and lease agreement, is that correct? A. That is correct.

Q. In other words, the partnership was not free to dispose of the equipment or use the equipment in any way? A. That is correct.

Q. During this period, Mr. Kennell, at any time during this period of 1944 and 1945, you and Mr. Hopkins and Mr. Stocking could have agreed to release the two parties to the contract at any time, is that right?

A. Yes, that could have been done. [32]

Q. The sale and lease agreement could have been terminated at any particular time?

A. That is right.

Q. The rentals that were provided for and speci-

(Testimony of K. M. Kennell.)

fied in the agreement, that is, the lease agreement, could have been changed at any time?

Mr. Perkins: I object to that. That is set up by the tariff of Washington State.

Mr. Picco: That could have been done by contract, your Honor.

Mr. Perkins: In violation of the State of Washington statute.

Mr. Picco: I will change the form of the question.

Q. (By Mr. Picco): Any term in that lease agreement could have been varied at any particular time by Mr. Stocking, yourself, and Mr. Hopkins?

A. Allowing due consideration for the priorities under which the equipment was received, the amendments could have been made to the agreements.

Q. In fact, any obligation under that lease could have been cancelled or terminated at any particular time? A. I think that is true.

Mr. Picco: That is all.

Mr. Perkins: I have just one question, Mr. [33] Kennell.

Redirect Examination

By Mr. Perkins:

Q. You said that Shaffer Terminals had equipment, but you needed more equipment of a different type? A. That is right.

Q. Can you elaborate a little bit on that, to explain what you mean by that?

A. Our situation was this: Palletized handling

(Testimony of K. M. Kennell.)

was coming in. It was the only way to economize on labor, which was short on the market. We had one ancient type fork-lift truck, but we had no other equipment of that type. So we had to acquire lift-trucks and the necessary pallet boards to complement them, to take care of the increased volume of movement.

Q. Was this lift-truck type of equipment of a more expensive nature than you had been accustomed to accumulate over the years?

A. Very much more so.

Q. Then is my conclusion right, that you were going into an entirely different type of equipment of a much more expensive nature?

A. That is correct, sir.

Q. And that was the purpose of Equipment Associates, as you saw it?

A. That is right. [34]

Mr. Perkins: That is all.

(Witness excused.)

SAMUEL B. STOCKING

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Perkins:

The Court: State your name and address, please.

The Witness: Samuel B. Stocking, 11518 Gravelly Lake Drive, Southwest, Tacoma.

(Testimony of Samuel B. Stocking.)

Q. What is your occupation, Mr. Stocking?

A. I am president of Shaffer Terminals at the present time and the Pacific Stock and Distributing Company also.

Q. In 1942, 1943, 1944, and 1945?

A. I was vice-president and general manager of Shaffer Terminals, until October of 1943, when Mr. Shaffer died. I then became president at the next meeting of our stockholders.

Q. From 1943 to that—to the end, say, of 1946, were you actively connected with Shaffer Terminals?

A. Very much so.

Q. Am I right in thinking you and Mr. Kennell were the two who gave practically all your time to the business during those years?

A. We did, entirely. [35]

Q. You have heard Mr. Kennell testify about certain aspects of the business in those years, is there anything in connection with that you would like to comment upon, or vary in any way?

A. Only that we acquired at that time, or thought that we were going to acquire a lot more of this type of equipment for improvement of the Milwaukee Terminals, which never came about. But if it had come about we would have had required \$50,000, instead of \$9,000 which we put in. But also a very important part of the thinking at that time was the legality of the matter, which loomed large in my mind.

Q. You were the one that secured the priority?

A. I wrote letters from everywhere—the Navy,

(Testimony of Samuel B. Stocking.)

the Army, and also the War Shipping Administration—I got letters even from the Chief of the Soviet Purchasing Commission of Seattle, and from the Miller McCormick Steamship Company, I guess that I had seven letters on that priority that went into Washington into April.

Q. You spoke of the possibility of the improvement of an adjoining dock which would require much more equipment than you eventually acquired through the partnership. Was that possibility present during the spring and summer of 1943?

A. It certainly was. Very much so.

Q. You were considering that at the same time, when you were considering the matter of financing equipment which you [36] financed through the partnership?

A. That is true.

Cross-Examination

By Mr. Picco:

Q. Mr. Stocking, you say that you and Mr. Kennell were the active members of the Shaffer Terminals in 1943?

A. After Mr. Shaffer died. Mr. Shaffer was convalescing from a very serious operation and wasn't available for consultation, and—we did consult with him frequently—and he at times came to the office, dictated letters, but the actual operation of the affairs from an operating standpoint were in Mr. Kennell's hands as chief operating officer, and Mr. Hopkins was general superintendent, with me as president of the company, looking after general

(Testimony of Samuel B. Stocking.)

matters of finance, and public contacts and government contacts, and that sort of thing.

Q. Was Mr. Shaffer very active at the very end?

A. Well, a man who had had a cancer operation two years before was mentally alert still, but under constant pain, and we tried to limit his presence with the company as to the smallest possible time. And he used to go to his house very often at Adelaide, which is seven or eight miles out towards Seattle, and he came to the office quite frequently, so that his activity with us was limited to his physical strength. [37]

Q. He had been slowing down, you say, in the two years prior to that time, I take it?

A. Yes, he was operated on in October, 1941, and died shortly after this contract was signed, in October, 1943.

Q. What duties and functions did you perform as managing partner of the Equipment Associates?

A. Well, I set the thing up in the first place, and spent a lot of time determining the propriety of transferring priority from Shaffer Terminals to the Equipment Associates, or whatever means we might use of financing this purchase, which was absolutely necessary. And the general operations of the Shaffer Terminals were dovetailed with the Equipment Associates, you might say, were pretty much dovetailed in all my activities.

Q. Outside of setting the partnership up, what

(Testimony of Samuel B. Stocking.)

were some of your functions as managing partner, after the partnership was formed?

A. Well, there were certain things we did. We had to replace any parts—the Shaffer Terminals only paid ordinary operating wear and repair, the same as our government contracts were for the government trucks. But if any pieces broke down, or if we had to hurry up and get something from Battle Creek, Michigan, and some of those trucks I had to move after that, there are a number of cases where I spent considerable time. [38]

Q. Were you operating then as managing partner?

A. Yes.

Q. Or as an officer of Shaffer Terminals?

A. I was operating as managing partner, from the start of Equipment Associates, yes.

Q. I mean when you ordered parts, weren't you operating as officer of the Shaffer Terminals?

A. I wouldn't say I was.

Q. I understand Shaffer Terminals were required to replace——

A. Yes, but that doesn't mean major parts.

Q. Would you say that your duties were such as managing partner that only you could have handled that phase of it?

A. The other fellows were working night and day and Sunday trying to keep cargo going to Russian ships. Hopkins, our general superintendent, retired at seventy, because he was being overworked. I don't believe I could have expected them to do it.

(Testimony of Samuel B. Stocking.)

Q. Then, Mr. Stocking, you were selected because you didn't have as much to do as the others?

A. I had plenty to do, but I didn't have as much, and I wasn't as close to the actual feeding of the cargo to those ships, and those boys were. You see, we didn't operate the actual ships, only the dock. [39]

Q. You received some salary for you——

A. I did; yes, sir.

Q. Tell us—\$2400?

A. \$2400 a year, \$200 a month.

Q. Wasn't this salary excessive for the type of work you had to do as managing partner?

A. I don't think so. That is the only salary the partnership paid out. I think a fellow who had been on the waterfront as long as I had, since 1907, had something on the ball, could keep things going, I don't think the salary was excessive.

Q. It is difficult for me to visualize what you were to do in this business.

A. We were serving the Army, Navy, and Lend-Lease, and everybody that needed service on the dock. We were operating strictly on a tariff, we weren't operating on a cost-plus basis. Believe me, those were strenuous days.

Q. I appreciate that. These things you are talking about, weren't they your actual task as an officer of Shaffer Terminals? A. What, sir?

Q. Weren't you performing these tasks as an officer of Shaffer Terminals?

(Testimony of Samuel B. Stocking.)

A. Those that I had performed for Equipment Associates I would say no. [40]

Q. Equipment Associates had no office except the office of Shaffer Terminals?

A. That is true.

Q. They had no employee except Seaton. Is that right? A. That is right, and myself.

Q. Seaton was the bookkeeper for Shaffer Terminals? A. That is right.

Q. You were receiving \$9,600 as salary as an officer of the Shaffer Terminals?

A. That is right.

Q. Would you like to comment on the fact that this \$2400 you were getting as salary from the partnership made it \$12,000 salary, or totaled from both organizations, the same that Mr. Shaffer was getting at that time?

A. I wasn't aware of that fact. It had nothing to do with setting it up that way.

Mr. Picco: That is all the questions I have.

The Court: Do the stipulations of fact show the financial worth of the individual partners? I don't know whether that is material or not.

Mr. Perkins: It shows the amount the individual partners withdrew from the partnership.

The Court: I know, but their financial worth, I don't know whether that might become involved.

Mr. Perkins: I don't think there is anything to [41] indicate the financial worth of the partners, of the stockholders individually.

Mr. Picco: The stipulation indicates that two

(Testimony of Samuel B. Stocking.)

of the partners had to borrow money to contribute the capital.

The Court: I don't know whether that might become involved or not.

Mr. Picco: On the other hand, the stipulation does contain the balance sheets in two or three instances at the end of the year, for the Shaffer Terminals, and also the cash position at the time of the transfer of the personal property.

The Court: Any further questions of this witness?

Mr. Perkins: No, I have none.

(Witness excused.)

Mr. Perkins: That is all the testimony I have. There is just one question I want to take up with Mr. Picco. On page 5 of the stipulation there is a slight misunderstanding.

Paragraph 9, we state that the Petitioner secured authority from the War Production Board for the purpose—for the purchase of needed equipment, because it could secure such authority.

The Petitioner in three cases ordered the equipment and sent a check with the order, and before these checks [42] were returned to Tacoma for payment, the partnership gave the Petitioner a check for the exact amount. The pertinent amounts and dates are as follows. I have the date of the Petitioner's check. Then I have a column for amount. Date paid. That is the date Petitioner's check came to the bank. Then date of Equipment

Associates check. In two instances, the check of Equipment Associates came before the other, so none of the Petitioner's money was actually used.

In the third case, Petitioner's check was paid June 27, July 30 the partnership reimbursed Petitioner. Now there is a slight misunderstanding in the amount of the check, I have there in the stipulation which I prepared. The amount of the check to Equipment Associates to Shaffer includes freight and everything. I don't know if that is material, but I just didn't want any misunderstandings. Perhaps it would have been better if the column of amount had come after Equipment Associates check, but it is the amount of Equipment Associates check and not the amount of Shaffer Terminals.

The Court: The Respondents so agree?

Mr. Picco: Yes.

The Court: That will be used in interpreting that portion of the stipulation of facts.

Mr. Perkins: I understand that it is customary to submit written briefs some time in the future?

The Court: Yes. [43]

The Court: Yes.

Mr. Perkins: I have just ordered a transcript of the evidence for deferred delivery. It apparently comes from Washington, D. C. The other stipulation which we agreed to this morning for a deposition which will be taken, I hope, the week of the 17th.

Mr. Picco has mentioned to me that he may need a little more time than customary. I will give him

all he wants. I would like the same consideration. Do you want to fix the time?

The Court: Yes. Do counsel agree on what time they prefer? Will sixty days be all right?

Mr. Perkins: Surely.

The Court: September the 5th. Both parties are given until September the 5th, within which to file their original brief, and if they desire to file a reply brief, either of them may have twenty or thirty days. Thirty, I think, is probably preferable.

Mr. Perkins: We file our briefs together, at the same time?

The Court: You file them contemporaneously. September the 5th. That is the alternate system of filing. This is the concurrent system that we are using now.

Mr. Perkins: How many days for a reply, Your Honor? [44]

The Court: Thirty days. October the 5th. And either party will have until October 5th within which to file reply briefs, should they elect so to do.

Mr. Perkins: The filing date they have to be in Washington, D. C.?

The Court: That is my understanding. They have to be there by that time.

Mr. Picco: I think some time ought to be set for the record, as I understand the testimony by deposition will be entered——

The Court: Is the deposition to be taken?

Mr. Perkins: To be taken during the week of the 17th.

The Court: Better get the name of the witness, for the record.

Mr. Perkins: E. E. Sears.

The Court: The oral deposition of E. E. Sears is to be taken by the parties, not later than August what?

Mr. Perkins: I was told, he told me that he would be back in his office July 17th. There is no reason why it can't be done that week, if I can arrange with you.

The Court: The deposition will be taken and it will be filed as part of the record in this case, and it will be considered by the Court as part of the evidence in the case. [45]

Mr. Perkins: Yes.

Mr. Picco: Thank you, Your Honor.

(Whereupon, at 3:10 o'clock p.m., July 5, 1950, the hearing concluded.)

Filed T. C. U. S., August 10, 1950. [46]

[Title of Tax Court and Cause.]

STIPULATION TO TAKE DEPOSITION

Whereas, the above-entitled proceeding came on for hearing before a Division of the Tax Court of the United States, sitting at Court Room, United States Court House, Seattle, Washington, on July 5, 1950; and

Whereas, at said time and place the parties hereto, by their respective attorneys, filed with the

Court a partial stipulation of facts in said proceeding, and two witnesses appeared and testified on behalf of the petitioner; and

Whereas, it was, at said time and place, agreed by and between the parties hereto, with the consent and approval of the Court, that this proceeding should be considered as being held open for the purpose of taking the testimony, by deposition, on behalf of the petitioner, of one Eldon E. Searles, at a time and place convenient to said witness and to the parties hereto, but on or before July 31, 1950;

Now, Therefore, It Is Hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that the testimony of said witness, Eldon E. Searles, on behalf of petitioner, may be so taken, by deposition, on the 28th day of July, 1950, at the hour of 3:00 p.m. (D. S. T.), before a competent officer, who has no office connection or business employment with either of the parties to this proceeding, to be agreed upon between counsel for the parties to this proceeding prior to the time of the taking of said testimony by deposition, in the City of Tacoma, State of Washington, at Room 1410 Puget Sound Bank Building, 1119 Pacific Avenue, in said city.

/s/ HENRY C. PERKINS,
Attorney for Petitioner.

/s/ CHARLES OLIPHANT, JHP.
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Dated: July 28, 1950.

[Title of Tax Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between counsel for the parties hereto that the deposition of Eldon E. Searles, whose address is 3711 North Proctor, Tacoma, Washington, shall be taken at 3:00 o'clock p.m. on Friday, July 28, 1950, at the Directors' Room of the Puget Sound National Bank of Tacoma, Puget Sound Bank Building, Tacoma 2, Washington, before Russell N. Anderson, whose address is 3202 North 19th Street, Tacoma, Washington, a Notary Public.

Dated this 28th day of July, 1950.

/s/ HENRY C. PERKINS,
Attorney for Petitioner.

/s/ CHARLES OLIPHANT, JHP,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

[Title of Tax Court and Cause.]

DEPOSITION OF ELDON E. SEARLES

To the Tax Court of the United States:

I, Russell N. Anderson, the person named in the foregoing stipulation to take deposition, hereby certify:

1. That I proceeded, on the 28th day of July, A.D. 1950, at the Directors' Room of the Puget

(Deposition of Eldon E. Searles.)

Sound National Bank of Tacoma, Puget Sound Bank Building, in the City of Tacoma, State of Washington, at 3:00 o'clock p.m., under the said Stipulation and in the presence of Henry C. Perkins and John D. Picco, the counsel for the respective parties, to take the following deposition, viz.:

Eldon E. Searles, a witness produced on behalf of the Petitioner.

2. That said witness was examined under oath at such time and place, and that the testimony of the witness was taken stenographically and reduced to typewriting by me or under my direction.

3. That after the testimony of the witness had been reduced to writing the transcript of the testimony was read and signed by the witness in my presence, and that the witness acknowledged before me that his testimony was in all respects truly and correctly transcribed.

4. That after the signing of the deposition in my presence, no alterations or changes were made therein.

5. That I have no office connection or [1*] business employment with the petitioner or his attorney.

/s/ RUSSELL N. ANDERSON,
Notary Public in and for the State of Washington,
Residing at Tacoma. [2]

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Deposition of Eldon E. Searles.)

ELDON E. SEARLES

produced as a witness on behalf of the Petitioner, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Perkins:

Q. Your name is Eldon E. Searles?

A. That is correct.

Q. You are a vice-president of the Puget Sound National Bank of Tacoma? A. Yes, sir.

Q. Did you hold that office in '42 and '43?

A. I did.

Q. How long have you held that office?

A. Since 1933.

Q. How long have you been engaged in banking?

A. Since 1907.

Q. In what branch of banking have you spent all or most of your time?

A. Most of the time in commercial loans.

Q. Commercial loans. During the 1940's, did you handle financing for Shaffer Terminals?

A. I did.

Q. And also for Equipment Associates?

A. I did. [3]

Q. You are familiar then with the loans that were made to the Shaffer Terminals?

A. I am.

Q. Will you just describe briefly the type of loans they were?

(Deposition of Eldon E. Searles.)

A. The Shaffer Terminals at that time and shortly prior thereto borrowed from us against the cash value of life insurance policies that they had, and occasionally a very short term 30-day or 60-day loan, supposedly against—you might say accounts receivable, or accounts receivable coming in.

Q. That was the only type, was principally a loan against accounts receivable and in some cases backed up by some life insurance.

A. That's right.

Q. Whose was that, do you know?

A. As I recall, it was on the life of both Mr. Kennell and Mr. Stocking.

Q. Now, are you familiar with the loans that were made to Equipment Associates, the partnership? A. Yes.

Q. Am I right that there was a loan made to the partners, individually, for the purpose of contribution to the partnership?

A. That's right. [4]

Q. Then was there a second loan to the partnership, secured by a chattel mortgage?

A. At a later date.

Q. Yes, at a later date. That was the third one, wasn't it?

A. Yes, as I recall there were two chattel mortgages.

Q. Now, are you familiar with the type of property that was acquired?

A. Well, they called them lift trucks, or cleat trucks, or something.

(Deposition of Eldon E. Searles.)

Q. I see. Considering the loans that were made to the partnership for equipment, what qualifications would a corporation have to acquire to qualify for that type of loan at your bank?

A. For equipment?

Q. Yes, for equipment, at the time it was actually acquired by the partnership.

A. Well, there are a number of factors enter into a deal like that. It depends on what sort of record the corporation has had——

Q. Yes.

A. ——and whether or not they are making profits, just so the profits are enough probably to service the loan properly.

Q. Yes.

A. And also take care of their other [5] borrowings.

Q. And further than that, their ability to repay the loan?

A. Oh, yes.

Q. Did Shaffer Terminals, the corporation, have those qualifications during the spring and summer of 1943?

A. Oh, I would say not to buy very much and on a certain element of time basis.

Q. On a certain element of time basis. What do you mean by "time basis"?

A. Well, a year, or a year and a half, or two years?

Q. Did Sam Stocking or Kem Kennell, representing Shaffer Terminals, discuss with you the

(Deposition of Eldon E. Searles.)

method of financing equipment which they needed at Shaffer Terminals?

A. Well, they talked in a sort of informal way they were going to need some of this equipment, or thought they ought to buy some because they were renting from the government——

Q. Yes.

A. ——and the danger of having that cut off, and discussed it in an informal way that they ought to buy some——

Q. Yes.

A. ——and discouraged them so far as their buying, and wanted to work it out some other way.

Q. Now, you discouraged the borrowing by the corporation.

A. Yes. Well, I don't know that we just turned them down, but we certainly weren't favorable to it. [6]

Q. Well, no actual application ever came to change that——

A. Not to my knowledge.

Q. Now, will you explain the financial picture of Shaffer Terminals during the spring and summer of 1943?

A. Well, we have a statement from them in the files here, in the early part of '43 I think it was. That was after the war was under way in '43—the early part of '43, and as usual, they only gave us a balance sheet. They never gave me the profit and loss operating figures. They never did except just in a rough way, but they never gave me anything but a balance sheet, and I see one here May 31,

(Deposition of Eldon E. Searles.)

1943. What date we got it I don't know. It was probably shortly afterwards, and that was just a balance sheet.

Q. Yes.

A. Now, in setting up the balance sheet they did as they always have done, they never added in their income tax statement—I mean income tax liability, and I see they didn't here. In fact, Mr. Ogden—I can recognize his little memo down here at the bottom, it says subject to deduction about twenty-five thousand income tax not yet paid for in 1942. I mean, whether that was right, that was his memo.

Q. Yes.

A. That is all I have to go on; so when you add the income tax liability, in our opinion, their current picture is [7] entirely too thin. I believe you would call it, for a borrowing on a time basis.

Q. Are you familiar with the financial history of the company back of '43?

A. Well, yes, we had loans back of '43, and then in the '30s, some, and they would occasionally borrow on these little life insurance policies, five thousand, and occasionally they would borrow something else for 30 days or so, on some particular bunch of business that they had, what we call short term 30-day, 60-day renewals, but the company never had a very good record, and we naturally just dodged anything we could, to a certain extent at least, because we would just be getting a little involved with them if we went too far, we felt, so

(Deposition of Eldon E. Searles.)

we watched it carefully. They were inclined to be a little more optimistic in their opinion than we thought they ought to be on the future, and their earnings were never very good. I see here in my record that they didn't give us a statement between December of '38 and September of '41, for instance. In December of '38 they had a net worth after taking the debts off of about eleven thousand, something, and they owed fifteen thousand six fifty-six fifty-five; and fifteen thousand nine ninety-six to pay it with.

Q. At that time did the income tax and further excess profits tax situation affect you? [8]

A. No, not at that time. Then three years later we got this report—a little better improvement, but still the very thin working capital position that it always had.

Now, maybe I should mention this. Mr. Shaffer, you will remember, was an officer of the bank, and a very fine fellow but an exceedingly optimistic sort of an individual, and always effervescing over a thing, and it made it a little difficult for us to handle the situation and not hurt his feelings because we thought a lot of him, but at the same time we had to always be careful about any commitment we made. Now, that was during up to, I will say, 1940 or '41, along in there—I don't know what time, but that was the general attitude. We had to be careful because they hadn't had a very good showing.

Q. May I ask a question? I don't know as you

(Deposition of Eldon E. Searles.)

understood it. When you were considering in 1943 a loan to a corporation does the income tax bracket that the corporation was in at that time affect you?

A. Well, I will say it does.

Q. Well, I thought you misunderstood me.

A. Oh, I will say it does. For instance, prior to 1943 year, I think this comment about income tax due here, Mr. Ogden made a memo there, and our own officers' comments here refer time and again to the fact that the statements never included that, and we always have to give consideration [9] if there is forty thousand or fifty-five thousand, and so forth.

Q. Did you know what tax bracket they were in at that time?

A. Yes, we knew that they were high. They would have to be. They had such a low—a small investment base. That was one of the very bad features.

Q. Yes. Now, did the possibility that the corporation might be subject to renegotiation affect you in loaning to the corporation in '43—for that period?

A. I couldn't say positively that that did at that time, because we always with all companies of that character had that in mind and discussed it time and again about the negotiations. We were always afraid of renegotiation. Now, no doubt we considered that factor, but later.

Q. Would you in 1943 at the time you loaned the partners of Equipment Associates and Equip-

(Deposition of Eldon E. Searles.)

ment Associates' partnership, have loaned the same amount for the same purpose and same business of the Shaffer Terminals, had they requested it?

A. Now, we didn't loan Equipment Associates then.

Q. I said to the partners. A. Oh.

Q. In other words, those loans that you made to the partners of Equipment Associates and loans to the partnership, would you have made those loans for the same purpose and on the same business to Shaffer Terminals had they [10] requested it?

A. No, I don't think we would because they were not entitled to it. They were borrowing all on these—against government accounts and so forth and the war may be over at any time.

Q. Did I understand you to say that the loans you were making to the Shaffer Terminals were perhaps stretching a point?

A. Well, definitely more than any stretching.

Q. In other words, they were overextended already. A. They were, I knew that.

Q. Now, the loans made to the partners and to the partnership were secured to some extent?

A. Yes. Mr. Shaffer's—we loaned Mr. Shaffer twenty-five hundred, secured by government bonds.

Q. How about Mr. Kennell?

A. Mr. Kennell's was based on his statement. We have his statement here. Mr. Kennell's was on the strength of his own statement and the con-

(Deposition of Eldon E. Searles.)

fidence we had in him, of course, over a period of years that we dealt with him.

Q. Did he have a personal net worth of some sort?

A. He had a personal net worth here of only about nine thousand, but twenty-seven hundred and seventy of it was in cash value life insurance which he was going to put up, but Mr. Kennell was divorced at the time; he had a [11] couple of youngsters that were juniors. It involved changing the beneficiary because they couldn't sign with him, so I agreed with him if he would—we would loan him—he only borrowed twenty-one hundred; he had enough cash to take care of the rest—if he could not pay back the loan over a short period of time satisfactorily that he would assign his life insurance.

Mr. Stocking's loan was twenty-five hundred and was based on his own statement which he gave us at that time, October, eighteen thousand nine hundred and thirty net worth, owing some on his home and some on Shaffer Terminals, and his was based just on his own—on his salary, and we felt on the basis of salary he was entitled to a loan.

Q. I believe you said you discussed informally with Mr. Stocking the method of financing the acquisition of this equipment.

A. I don't know as I said "the method," no. He told us that he wanted to—that they were going to buy—that they ought to buy them to play safe. and as a matter of how to finance——

Q. How to finance? A. Yes.

(Deposition of Eldon E. Searles.)

Q. Did you suggest a method that they finance it on?

A. I couldn't say that I suggested that they buy it personally. [12] I don't remember that I said anything about him borrowing personally, but I certainly discouraged them from borrowing for the company, because the company did not—we felt should not go into any deal to buy equipment.

Q. To just make it definite, in your opinion Shaffer Terminals couldn't have qualified at that time?

A. Not properly according to our policy, no.

Mr. Perkins: That is all.

Cross-Examination

By Mr. Picco:

Q. Now, Mr. Searles, what was your official position at the bank in September and October of 1943, at the time these discussions with Mr. Stocking and Mr. Kennell? A. Vice-president.

Q. Did you also talk with Mr. Shaffer at that time?

A. I don't recall ever talking with him, other than the fact that when he wanted to borrow this, Mr. Shaffer was very careful about mixing in his affairs—his own affairs. Further than that, Mr. Shaffer was ill at the time at home or probably in the hospital. He died shortly after that.

Q. You didn't discuss anything with Mr. Hopkins? A. No, never.

(Deposition of Eldon E. Searles.)

Q. Did you do business with these people in your official [13] capacity as a representative of the bank? A. I did.

Q. You didn't necessarily do it as a friend?

A. No.

Q. Well, tell me, did Shaffer Terminals request a loan of \$9500.00 in September and October of 1943?

A. Not that I know of. Not formally. A lot of those things we discuss informally. It is done time and again.

Q. In other words, at that time you had no application for a loan from Shaffer Terminals?

A. We had no application, I am sure. The file doesn't reveal that we had an actual application.

Q. Did you advise Mr. Stocking and Mr. Kennell to form a partnership at that time?

A. I did not.

Q. You did recommend a loan at that time to Mr. Stocking and Mr. Kennell?

A. And Mr. Shaffer.

Q. And Mr. Shaffer, a twenty-five hundred dollar loan? A. They asked for it.

Q. That's right, and you recommended the loan?

A. Sure. I made the loans.

Q. As a matter of fact, you did not say then nor do you say now, that you would refuse to recommend a loan of nearly \$9500.00 to Shaffer Terminals in September and October, [14] 1943?

A. I would not have recommended it. It might

(Deposition of Eldon E. Searles.)

have gone through but I wouldn't have recommended it.

Q. You were aware, were you not, that the \$2500.00 loans to the individuals—that is, Mr. Stocking and Mr. Kennell—were for the purpose of financing the purchase of this equipment which would be used by Shaffer Terminals?

A. They were forming a partnership and they wanted that much to go in. Now, what they were buying exactly at that time I don't recall. I think probably the files probably tells us—it probably mentions it. I'd have to look and see.

Q. I assume you people definitely want to know what the loan is going to be used for, don't you?

A. Oh, yes, of course. Yes, here is Mr. Stocking's statement, account of the interest in partnership of Equipment Associates. Mr. Stocking and Mr. Shaffer and Mr. Kennell, to form a partnership; style of business is associates, and each of which is to own a one-fourth interest, and they are putting up \$2500.00 each, or a total of \$2500.00, and then below is the new loan of \$2500.00. We granted Mr. Stocking an unsecured loan of \$2500.00 for 90 days at five per cent. The purpose of this loan is to furnish funds required of Mr. Stocking to purchase this one twenty-five per cent interest.

Q. The question was: did you know what the purpose of this [15] loan was? Was the loan for the purpose of purchasing this equipment that would be used by Shaffer Terminals?

A. Well, that does not say anything about it.

(Deposition of Eldon E. Searles.)

He is buying a twenty-five per cent interest. Now, I will see what Mr. Kennell says, and see what he says about it.

Q. Don't necessarily read from that, if you please. Just read it over and find out what it is and then tell us, if you please.

A. It does not refer to the purpose of the funds at all. It's buying a twenty-five per cent interest.

Q. Is it not a fact that you would have known what was the purpose of the loan, would you not?

A. Probably would have.

Q. So would you say that you did know the purpose of the loan at that time?

A. I imagine I did but I can't say I did, because I don't know I did, but I imagine that is what it was for.

Q. Now, if that is what it was for, you people wouldn't have been interested in knowing what the individuals were going to do about how to get this money into the corporation that you—you wouldn't care whether they formed a partnership and bought the equipment themselves, or whether they directly loaned that money to the corporation? That wasn't any of your affair, as long as they were using it for the purchase of the equipment? [16]

A. I certainly would want to know what they are using it for, I mean, that they were making money out of it.

Q. That's right.

A. They were going to form this Equipment

(Deposition of Eldon E. Searles.)

Associates partnership here and supposed to make some money on it, to pay the loan back.

Q. That is correct. You knew, however, that they were to use this money to purchase this equipment?

A. I didn't say I knew they were going to buy equipment. The file doesn't say that we knew they were going to buy equipment.

Q. If the file doesn't say it, at least you did know what they wanted that money for?

A. I assumed that——

Q. So we know what they use that money for?

A. ——because we expected they would get enough money back, enough to pay the equipment loan off.

Q. All my question is, as far as you are concerned, you wouldn't have cared whether they loaned that money directly to the corporation, or whether they formed a partnership to loan it to the corporation? A. Yes, I would.

Q. Why would you?

A. Because I would want to know how that money is coming back, and that corporation was in no condition to pay [17] money back from profits.

Q. Well, do you realize that that partnership was dependent completely on Shaffer Terminals for whatever money it was going to get in this deal?

A. Well, from a lease standpoint I suppose they were.

Q. Then you had to get interested in knowing just exactly what Shaffer Terminals was going to

(Deposition of Eldon E. Searles.)

do about this thing, or at least you had to feel certain that they would be able to get this money from Shaffer Terminals in order to repay your loan?

A. Well, no, the payment of that loan from those individuals was based upon their personal responsibility. We wouldn't have loaned it otherwise than that way.

Q. Now, you stated that you did loan money to Shaffer Terminals before that time? A. Yes.

Q. Can you tell us just how much money you loaned the Shaffer Terminals before that time?

A. Well, how much? Do you mean in what way, the peak loan, probably?

Q. Just go over your records and tell us the few times that Shaffer Terminals borrowed money, how much money was borrowed and what the terms were. A. Prior to that time?

Q. Prior to that time. As I understand it now, they did not [18] apply for a loan at this particular time in September and October of 1943?

A. Informally they talked about wanting to buy some equipment.

Q. That is the two officers, Stocking and Kennell?

A. Stocking and Kennell. Well, they had a loan back here in February of ten thousand, and advised that they needed some payments then pending from the government——

Q. Well, what time—— A. April.

Q. April of what year? A. '43.

(Deposition of Eldon E. Searles.)

Q. '43, and what were the terms on that?

A. It doesn't say—30 days, it says, 30-day note.

Q. Was that note paid up in the 30 days?

A. Let me see. It doesn't mention renewal. We don't write in every item here, but they borrowed an additional five thousand further on in April.

Q. Of 1943? A. Uh-huh.

Q. And was that a one-month note, too?

A. It doesn't say—30 days.

Q. Did they pay that up?

A. No, and so as they did not pay it promptly, and we had to renew it again. Note renewed, I renewed the note again.

Q. Was it paid then? [19]

A. No, in June a loan to enable them to carry the government receivables. It reduced their loan to ten thousand. In other words, it was up and down in there.

Q. You were, again in 1943, loaning Shaffer Terminals money on those accounts?

A. Well, we loaned them on the accounts receivable just because they had it coming.

Q. That is what you were doing it on?

A. Yes, sir.

Q. Did they borrow any money in 1942?

A. Yes, a life insurance loan—against the life insurance, rather. And they borrowed five thousand in April of '42.

Q. What kind of terms did you give them?

A. It doesn't say here. It doesn't show. We didn't always put that down.

(Deposition of Eldon E. Searles.)

Q. I take it that these loans were paid. Otherwise you would have that on there? A. Yes.

Q. Were there any other loans in 1942?

A. Yes, twenty-five hundred more along in July. It was drawn for 30 days.

Q. Look through 1942 and see how many loans you did have, giving the amounts and the terms.

A. Well, you have to understand that this type of a record doesn't always show every five thousand or twenty-five [20] hundred dollar loan is made or paid, and here is a loan made in July of five thousand for 30 days, assisting in carrying heavy receivables, and along in October——

Q. How much was that loan?

A. Five thousand.

Q. That was in '42? A. Uh-huh.

Q. And the terms? A. 30 days.

Q. All right.

A. Here is another in October of five thousand which was paid in December.

Q. Are those all the loans you can find?

A. Yes, that is all, yes.

Q. How about 1941? Did you make any loans in 1941?

A. I possibly did. Now in July I see a \$2000.00 loan against the life insurance.

Q. Did they pay that up? What was the terms on that one?

A. Oh, we always draw it for one year and they can pay it any time they want to.

(Deposition of Eldon E. Searles.)

Q. When did they pay it up, can you tell by looking at that? A. Not necessarily, no.

Q. That loan against insurance you can cash in on that? A. Cash value. [21]

Q. Usually loans against accounts receivable and other securities you make it for one month, or maybe a smaller term?

A. Sixty or ninety days. In October of '41 we handled a five thousand dollar loan on a 30-day basis, while they expected to retire it prior to that time. Whether they did or not I don't know.

Q. Well, from your recollection they made these payments, did they not? A. Yes.

Q. Now, in view of the fact that your bank did make these loans from 1941 on, to Shaffer Terminal, anywhere from two thousand up to ten thousand dollars on terms of one month, would you maintain your statement that you would not have recommended a loan in September and October of 1943, for \$9500.00?

A. Yes, on a term basis, yes.

Q. Well, what do you mean by a "term basis"?

A. Oh, eighteen months or two years.

Q. Well, you were not sure whether they would last for eighteen months or two years, were you?

A. Well, I don't know, but normally that is about what they generally run.

Q. In other words, when you made the statement that you would not recommend the loan to Shaffer Terminals, you meant [22] a loan on a basis of repayment within eighteen months or two years?

(Deposition of Eldon E. Searles.)

A. Oh, no, I believe it could be 12 months.

Q. That is right.

However, as far as these three months' loans are concerned, would you change your mind as to whether you would recommend a loan to Shaffer Terminals in September and October of 1943?

A. For these type of loans?

Q. That is right.

A. No, we made them but we didn't like to make them, I will be frank with you on that.

Q. Your answer is that you would recommend, then? A. Well, under the circumstances, yes.

Q. Now, the type of terms you gave to Mr. Kennell and Mr. Stocking were small term loans, were they not, of three months?

A. Oh, well, we never expect them to pay it back in three months.

Q. Well, I mean that they were?

A. Well, that is the way we draw them.

Q. You draw them for three months.

A. Yes, that is correct.

Q. So when you said you discouraged borrowing by Shaffer Terminals when you were discussing this matter with [23] Mr. Stocking, you meant borrowing on a basis of eighteen months or one year?

A. That is right.

Q. And when you said Shaffer Terminals was not qualified to borrow, say \$9500.00 in September of 1943, you meant borrowing upon a long term?

A. That would be my opinion on it, that is correct.

(Deposition of Eldon E. Searles.)

Q. Do I understand, to repeat again, as far as borrowing—as far as this partnership is concerned, you gave no advice one way or another on that, you weren't interested in that, whether they operated the business by the partnership or by any other form of structure. You were interested in the security of the loan and how they would pay it back?

A. That is the personal—you are speaking of personal loans, that is right.

Q. Now, did you deal exclusively with Mr.—you dealt exclusively with Mr. Stocking and Mr. Kennell and Mr. Shaffer on these partnership loans?

A. That is right.

Q. Who was the most active member of Shaffer Terminals at that time? That is, if you know.

A. Oh, I don't know whether Mr. Stocking or Mr. Kennell was. Mr. Shaffer, of course, was ill.

Q. Was he ill at that time? [24]

A. Yes, he died shortly afterwards.

Q. Do you know whether he had been active at one time? A. Oh, yes, very.

Q. Would you say he was active at all of 1943?

A. No, just in a supervisory way—or in an advisory capacity.

Q. If you know, when was it that his health began to affect his activity with Shaffer Terminals?

A. He came in the bank about 1937, I guess. Of course, he gave up most of his time to that from '37 on for six years, there, but he was always in touch with the affairs of the company, I think, pretty well.

(Deposition of Eldon E. Searles.)

Q. Now, you did know, I take it then, the financial position of Shaffer Terminals at all times during the war years, and especially in September and October of 1943?

A. They gave us a statement periodically, such as it was, a balance sheet. No profit and loss statement.

Q. Of course, you could have gotten a profit and loss statement if you had asked for it?

A. No, they never wanted to give it—I mean, we never insisted on it.

Q. You never insisted on it?

A. We never insisted on it.

Q. I want you to look at Exhibit 5 which is an exhibit which we have attached to a stipulation of facts in this case. That is an agreed statement as to the working capital [25] position. The second column tells you what their working capital position was in September and October you might say—it is dated September 30, 1943. The bank balance at that time was over \$28,000, as you can see, and their accounts receivable, as you know, were accounts owing by the government and by——

A. That is right.

Q. Is over \$134,000.00. They had some notes payable and some accounts payable, but they are approximately \$72,000.00. Now, with that in mind, and in view of what you do know about this corporation all throughout there, you wouldn't say they were bankrupt at that time at all?

A. No, they were not, but there was another lia-

(Deposition of Eldon E. Searles.)

bility in there during the war years, believe me, we watched closely, and that is your tax liability. It doesn't show there.

Q. That is correct.

A. And we never knew what it was or exactly how much it was. We had no way of determining exactly, only just by their verbal statement.

Q. Of course, you understand on a short term loan of one month or three——

A. That's right——

Q. You weren't interested in their tax load at the end of the year?

A. That is the reason we make those loans. [26]

Q. From that working capital position you wouldn't say at that time that they were in any financial difficulties, would you? That is, Shaffer Terminals.

A. No, I wouldn't say they were in difficulties, but you add your tax liability on there which we certainly always do. They found it to be a very real liability in a lot of cases when they finally woke up.

Q. Did you know what the liability was in that corporation?

A. They told me exactly what it was. I think I have got some comment on that. That's the end of their fiscal year.

Q. From the standpoint of short term loans, however, would you say that they were in any financial difficulties, I mean, from the standpoint of what you are looking at?

(Deposition of Eldon E. Searles.)

A. Well, no, I wouldn't say they were in any difficulties, but we never looked upon it with a great deal of favor, I'll say that. I have got comments in here that refer to that.

Q. But you are satisfied that their cash position was as stated there to be, and the accounts receivable were over \$134,000.00?

A. If we didn't have confidence in those individuals that we did, that they were morally right, we never would have gone this way with them. Just never.

Q. I mean on accounts receivable from these various elements of over \$134,000.00 on that alone, if you didn't have [27] your cash position as strong as it appeared to be, twenty-eight thousand, you were perfectly confident that you would get a hundred per cent back on these government accounts or you wouldn't have made the loan on them?

A. We wouldn't have made the loan, unless we thought they would pay, yes.

Q. I want to ask you one other question here. Say in September and October, 1943, with that Exhibit 5 before you, would you say there was any occasion at all for Shaffer Terminals to borrow \$9500.00?

A. September of '43?

Q. That's right.

A. Well, I don't know what they had to pay out there. They probably had a note coming due for one thing, and another thing is the accounts payable at thirty-seven thousand, and a Social Security Tax for thirteen thousand. That's fifty thou-

(Deposition of Eldon E. Searles.)

sand alone. Twenty-eight thousand, they won't go very far on that.

Q. But you have got twenty-eight thousand dollars in cash. You have got over a hundred and thirty-four thousand in accounts receivable.

A. Yes.

Q. They might have been squeezed for cash at that particular time, so there might have been an occasion for borrowing at that time, as far as Shaffer Terminals is concerned, [28] is that correct?

A. To them, their receivables came awfully slow. I'll say Uncle Sam paid awful slow.

Q. But they did pay every dime as far as I can tell from that, did they not?

A. As far as I know.

Q. Now, assuming that there was a need to borrow this money on this particular date, what difficulties could you have visualized at that time that could have been encountered by Shaffer Terminals as far as getting a loan of \$9500.00 from your bank on the same terms that you gave the individuals, three months?

A. Oh, we wouldn't have loaned it to them for three months. It is foolish to talk about three months. They wouldn't pay it back in three months if it was going to be for equipment. But the individual, you loan an individual entirely on a basis that you don't expect to get it back in three months.

Q. You did loan to these individuals on a three-month basis, did you not?

A. We draw the notes that way.

(Deposition of Eldon E. Searles.)

Q. And you had loaned Shaffer Terminals all throughout the year before and for the last two or three years \$10,000.00 and \$5,000.00, and \$2,000.00 and another \$5,000.00 and a few other loans all on the basis of one month and if they [29] needed a renewal once or twice you gave it to them. Now, on that basis—I think we did cover this ground and I don't want to keep harping on this, but on that basis you would have at that particular time recommended a loan and they probably would have gotten the loan if they had applied?

A. On an equipment basis?

Q. On a short time loan for——

A. I would not recommend it, I know that. Now, that might have happened——

Q. I understood you to mean not too long ago—about five minutes ago that you would have recommended a loan or a short term loan up to \$9500.00.

A. No, certainly not to buy equipment. The equipment isn't going to pay back a loan, but Uncle Sam's \$10,000.00 coming to them would pay back a loan. That comes in as cash. The equipment doesn't come back as cash.

Q. Do you mean to tell me and tell any reasonable person that you wouldn't have loaned \$9500.00 on the face of that working capital position, regardless of what that money was applied for, I mean whether it was applied for equipment or any other normal purpose of the corporation. Your only qualification, would it not, be that it was one

(Deposition of Eldon E. Searles.)

month. You are interested in whether he could pay up in one month or two months, is that correct? [30]

A. No, I wasn't interested whether they could pay up in one month or two months, fully, except on their loans of forty or forty-five thousand dollars they show they are borrowing here. But if they are borrowing to provide equipment, then I'm going to get back a ten thousand dollar check at the end of 30 days for equipment to pay the loan; but if Uncle Sam owes them ten thousand dollars, they must get the check in to pay the other loans.

Q. That's correct.

A. Well, that is two different things.

Q. Well, isn't that—you loan that money to the three individuals on the same property, and you put it on a three-months' basis. Now you say yet you renewed that? A. Sure.

Q. But you didn't have to renew it at the end of three months?

A. We do that with individuals right along. A man making a thousand dollars a month like Stocking was, he is certainly good for a twenty-five hundred dollar loan, and can pay it back over a period of time. It is done all the time with individuals.

Q. Do you know where Stocking was getting his money? A. His salary?

Q. That is his salary from the Terminals. The fact that paying you back on those individual loans was dependent on just how successful they were with the operation of [31] Shaffer Terminals.

A. To a certain extent yes, but he had an

(Deposition of Eldon E. Searles.)

eighteen thousand dollar net worth. He had other sources of funds. He owned part of the Terminal Warehouse for instance, something the Shaffer Terminals had nothing to do with.

Q. So you don't think that any bank would have loaned a mere \$9500.00 to Shaffer Terminals on a three months' note basis?

A. I don't know that.

Q. —in September and October of 1943, in view of that working capital position?

A. I would have to qualify the working capital position, because that is not a working capital position. You have got probably fifty thousand more income tax that is not revealed there.

Q. You just got through telling me that on a short term loan you are not interested in the tax loan which might have to be carried by the applicant for a loan. Do you know, Mr. Searles, that it cost Shaffer Terminals over \$77,000.00 in rental payments during 1943, 1944 and 1945, for using the equipment which cost these particular officers doing business as Equipment Associates, approximately \$30,000.00?

A. No.

Q. I want you to examine Exhibit 3 which is a list of the rentals. Look at the—I think it is the second column, [32] rental paid to Equipment Associates.

You will note there that the corporation was paying out anywheres from eighteen hundred to fifty-five hundred dollars each month, approximately, in 1943 and 1944, for the use of equipment. Would you

(Deposition of Eldon E. Searles.)

say that any corporation which could pay that kind of money out every month was not qualified for a ten thousand dollar loan in October and September of 1943?

A. You are talking about '43 and referring to what happened afterwards. We didn't know what would happen afterwards. I didn't know what was going to happen after '43. We were dealing in '43, when we made our loans.

Q. Sure.

A. Things went along and it worked out apparently all right.

Q. You knew that they would have to pay a rental for that equipment?

A. A rental, sure.

Q. You knew that these individuals, Mr. Stocking, Mr. Shaffer, Mr. Kennell and Mr. Hopkins were depending on rental payments for the solvency of the partnership which they had formed?

A. We weren't depending on that because they had plenty of assets as far as we were concerned to our loans.

Q. But you did know that that was where they were going to get their money, from the rental payments, so far as this [33] business was concerned?

A. I assumed they were, but we weren't worrying about them. They had plenty of assets besides.

Q. I want to ask you another question. Isn't this true that it would have been cheaper for Shaffer Terminals to purchase the equipment itself rather than to pay rentals costing approximately three

(Deposition of Eldon E. Searles.)

times its cost over a period of two and a half years?

A. Well, I suppose. I don't know anything about that part of it.

Q. I mean—I assume you have examined now the rental payments—these rental payments in the second column on Exhibit 3, attached to the stipulation of facts.

To summarize what has been gone over, I just want to ask you a few more questions, Mr. Searles, to see if you have got your testimony correct.

You did not have, in September and October of 1943, any application from Shaffer Terminals for a loan in and around \$9500.00?

A. I am sure we didn't have a formal application, no. The thing was discussed informally about purchasing this equipment, but not in the form of a formal application to put up to the loan committee to pass or reject.

Q. You did not advise Mr. Shaffer, Mr. Stocking, Mr. Kennell or Mr. Hopkins at any time in September or October of 1943 [34] to form a partnership for the purpose of financing the purchase of equipment?

A. I did not.

Q. In fact, as far as the bank was concerned, it wasn't really interested in how that equipment was financed?

A. We were loaning to the individuals at that time, alone.

Q. You said that the Shaffer Terminals had a poor financial record up to 1941?

(Deposition of Eldon E. Searles.)

A. Well, around that period, '40. I don't know just when it first was.

Q. And then it improved after that?

A. It improved some, yes.

Q. It improved to the extent that you did give them a considerable number of loans after '41 and up during the war years, and up to the time—at least up to September of 1943?

A. Yes, and after.

Q. You said after that. Did you make them any loans after that, too?

A. On the same basis on receivables. They would report on what they had coming.

Q. Would you go over your records once more on that on how many loans, the amount of the loans and what the terms were, from September of 1943 on say, through 1945?

A. Well, again I will tell you we don't write down everything. [35]

Q. I appreciate that, but you see what you have in your notes on that.

A. '44, let's see, the unsecured loans in March are mentioned as being twenty thousand, loans against collateral seven thousand. In August we made them a ten thousand dollar loan.

Q. That is August of what year?

A. '44, 30 days.

Q. These loans are short term loans?

A. They were made for 30 days. They didn't always get their money, so they had to renew them

(Deposition of Eldon E. Searles.)

once in a while. They were always based on what they thought they would get in.

September, '44, apparently was a new high, because it is so marked here, a total of forty-five with fifteen thousand more at that time.

Q. In December (sic) of '45?

A. In '44. In September of '44, and then it seems to run along—like they commented here, in October they of course took in payments right along but never received enough to relieve their cash position sufficiently to pay their loans. I mean that is what was happening right then.

Q. Answer my question, please.

A. June of '45—this is a loan being paid in full, twenty thousand. Let's see. They paid a loan reduction in May [36] of twenty-five thousand. They paid another one of twenty thousand in June, so they apparently got some money.

Q. The history shown in your books indicate that the bank was loaning money to Shaffer Terminals you might say frequently, throughout—from 1941 through 1945, is that correct?

A. Yes.

Q. On short term loans?

A. That is right.

Q. Did you say "yes"?

A. Yes.

Mr. Picco: Carry on.

Redirect Examination

By Mr. Perkins:

Q. Do your records show whether or not in September of 1943 you made a loan of \$20,000.00 to Shaffer Terminals—September of '43?

(Deposition of Eldon E. Searles.)

A. Yes, September the 9th, \$20,000.00 loan for 30 days.

Q. Will you take a look at Exhibit 5 which I believe you have before you? A. Yes.

Q. The first date there, the bank balance showing \$115.72, and then the figure just below that of twenty-eight thousand six eight three point [37] three two.

A. That was at the end of that month.

Q. Yes, at the end of that month. Would you say that twenty thousand of that money was the proceeds of the \$20,000.00 loan?

A. Well, that would be hard to say whether it was still in there, but that could be, probably——

Mr. Picco: If you want to answer that question directly—I mean, there is no guessing on that.

The Witness: I have no way of knowing.

Q. Will you look over at the notes payable, line 10, the top figure there is fifteen thousand. Drop down one and it is thirty-five thousand. That does reflect—— A. A twenty thousand loan.

Q. Do you know the purpose of these loans that you made to Shaffer Terminals? In other words, what did they do with the money?

A. Well, it always helped to pay their bills, their labor and things of that nature. It has always been a current deal.

Q. That is called working capital? A. Yes.

Q. In other words the money didn't buy new equipment. It was to pay their current obligations which were largely payroll?

(Deposition of Eldon E. Searles.)

A. Well, what they all were—there was a lot of pay roll, [38] of course.

Q. Well, they had a lot of pay roll then, due to the amount of business. I believe you mentioned that the individual notes executed by the members who later formed a partnership were 30-day notes, were they? A. 90 days, I think.

Q. 90?

A. I believe that is what they state. Normally that would be the way to work them and allow them to pay some and go for another 90 days.

Q. For certain reasons you wanted 90 days, whether it was expected—

A. It always puts you in a good bargaining position.

Q. You said definitely you would not recommend a loan to Shaffer Terminals on a question of credit, but you say it might have gone through. Do loans normally go through against your recommendation?

A. Oh, no, not against recommendation, no. Normally they do not, no.

Q. It would be a very unusual thing if the loan would have gone through?

A. It would be, with the senior officer recommending.

Q. Now when you make a loan, you always consider how that loan is going to be paid back, don't you? A. Sure. [39]

Q. The possibilities of it being paid back. In connection with the loans you made to the indi-

(Deposition of Eldon E. Searles.)

viduals and Equipment Associates, did you consider their source of repayment of the loans?

A. Yes, I did.

Q. What was that source?

A. Well, the individual's source would be their salary, or whatever they have got. Shaffer put up cash—I mean bonds. Kennell agreed to give us a life insurance policy if the loan didn't pay off to our satisfaction and Stocking's own statement of eighteen thousand net worth, justified it.

Q. Now, what was the source of the loan situation of the partnership?

A. Well, by that time they had some strength behind them. As I recall, they came in and said they wanted to buy some more. I don't know whether it was two or three, or whatever the thing was. They came in and had some figures on what they had been doing. We probably wouldn't do it otherwise. No, I wouldn't say we wouldn't do it, otherwise, because if the individual loans had been paid up again, it's a partnership deal.

Q. But my line of thinking it was the experience with the rental payments?

A. That would be the normal thing. We take the history and [40] then say "Well, it looks like it's a good bet here for a little while," and——

Q. If the loan had been made to Shaffer Terminals, and Shaffer bought the equipment, where would there be a source of repayment in that situation?

A. Well, there probably would be a source of re-

(Deposition of Eldon E. Searles.)

payment, as it turned out later, but with the situation—narrow working capital as we showed here.

Q. Was there any apparent possibility of being repaid on a loan like that at that time?

A. Oh, I wouldn't say it was impossible, but gee, with the income tax the way it was and excess profits tax, and that small a base, it was such a small investment. They had no base to operate on. If they made sixty-five thousand dollars, fifty-five thousand would go for tax, or roughly. I don't know the exact figure, but I am just using that as an example.

Recross-Examination

By Mr. Picco:

Q. Now you said that you did look at the source of the income as far as the partners were concerned in their loans which took place in 1944 and in 1945?

A. They had the partnership behind them.

Q. You found at that time that the source was rental payments [41] from Shaffer Terminals?

A. However, the individuals themselves had income, what they had personally.

Q. Now, if Shaffer Terminals would have put in an application—this is an assumption, of course, in March of 1944 and in June of 1945, instead of the partnership, you would have found the same source, would you not, at that time as far as where the money was going to come from?

A. Well, Shaffer Terminals, I don't know—their statements that came in subsequent, I think, did

(Deposition of Eldon E. Searles.)

show an additional strength, as I recall. I don't remember what their statements showed.

Q. You would have found out, would you not, that they were paying rental payments to Equipment Associates anywhere from eighteen hundred up to fifty-five hundred dollars every month?

A. Well, I don't remember——

Q. Well, we are assuming at that time that you did check into that, because you just stated that you knew the source of the income of Equipment Associates.

A. They had it in the record showing that they had done very well. We made them the loans, anyhow.

Q. They had had some experience by this time?

A. Yes, that's right.

Q. The only experience they had had was in turning around [42] and turning the equipment back to Shaffer Terminals, and Shaffer Terminals was using it, is that correct?

A. Oh, I meant they had some income—net income from it.

Q. The income was coming purely and simply from the rental payments they received from Shaffer Terminals?

A. From Equipment Associates, I presume.

Q. That's right, that is the only income they had, isn't that right?

A. Well, I don't know. I don't know what else they had. I never checked it.

(Deposition of Eldon E. Searles.)

Q. So you did know that this income was coming from Shaffer Terminals at all times?

A. To Equipment Associates?

Q. That's right.

A. As far as I knew, their arrangements were with Shaffer. I never inquired who they were renting it to.

Q. You did check up—in making this loan you checked up on just what the purpose of the loan was and where the money was going to come from?

A. That's right.

Q. And you did find out at that time, is that correct?

A. The fact is, I don't remember much about that loan. I made the loan on equipment, and then took a chattel mortgage on it.

Q. Did they submit a financial statement? [43]

A. No, I don't know whether they did or not.

Q. Well, from your way of doing business would you say they submitted a financial statement?

A. Yes.

Q. One other thing, I wonder if you could spend just a little time in checking over the loans to Kennell, Stocking and Shaffer in September and October of 1943, and see if they took more than three months to pay those loans up? You may not have it and you may.

A. I rather doubt it. I don't know. No, Kennell probably paid on some sort of a monthly basis. That doesn't show here at all. The ledger sheet would

(Deposition of Eldon E. Searles.)

show, but this doesn't show it. It doesn't show on Kennell.

Shaffer—I don't mean Shaffer, but Stocking, rather, in April of '44, we renewed two thousand dollars of the balance. I would say from that he paid \$500.00. That refers to the loan we made to him to purchase a one-fourth interest. We made him a little loan later on his own life insurance. They generally pay on a monthly basis, those fellows, but apparently Stocking did not pay for six months. He only repaid \$500.00.

Q. Mr. Searles, I have got just about two general questions and I am pretty certain they will be the last that I will ask you.

I want to get back to a statement. You said [44] that if, and this is just an assumption, apparently, because they didn't make an application in September or October of 1943, that if Shaffer Terminals had come in for a loan at that time, and if you knew the purpose of the loan was to buy this equipment, you would not have recommended the loan?

A. I wouldn't have under the circumstances, no.

Q. If they were willing to give you a one-month note on that would you have changed your opinion on that, if they would have given you a one-month note?

A. They would have had to give us somewhat of an assurance that that could be paid up along with the rest of the loans.

Q. Well, I say if there was assigned over to you accounts receivable in that amount, accounts receiv-

(Deposition of Eldon E. Searles.)

able that you knew were good from the government?

A. But the accounts receivable were affecting the other loans we already made against them for accounts receivable not assigned to us, but we were looking towards that source of payment, because it affected that. We just as well let them have an open account.

Q. You understand that that loan that they asked for was only in the amount of \$9500.00, or would have asked for was only in the amount of \$9500.00?

A. That's right. [45]

Q. Now on top of that if they had thrown in a chattel mortgage which you probably would have asked for, and possibly if necessary you would have wanted guarantees or something from the stockholders which might have been a possibility, would you still hold to your view that you wouldn't have recommended a loan to this corporation in that particular situation?

A. You are assuming that the stockholders ought to all endorse. They never endorsed separate loans.

Q. I am just going to see how far you would go before you would change your mind as to how you would recommend a loan when it came to Shaffer Terminals, in view of the fact that you had been loaning them all the time before that and after, and I understand that you dealt with them——

A. Yeh——

Q. You are saying "yes," aren't you, to these questions I have asked?

A. I dealt with them, yes.

(Deposition of Eldon E. Searles.)

Q. Yes. A. For some time.

Q. What would you have taken then, before you would have recommended a loan knowing that the purpose of the money was—that the purpose of \$9500.00 was to buy equipment, before you would recommend a loan?

A. Well, I would have to have some—probably the individuals [46] endorsed. I don't know whether I would or not, because we know that the Shaffer Terminals wouldn't get to pay it back—I mean we just assumed they couldn't pay it back.

Q. Now then, how could you assume then they could assign over some accounts receivable to you?

A. We were protected on accounts receivable—but then they will pay accounts receivable loans—all the rest of them have paid out; but how are you going to pay \$10,000.00 by equipment?

Q. How would it have been had you been assured that they would have paid anywhere from \$1800.00 up to \$5500.00 every month, instead of paying out payments to anybody else for rent, they would have saved that? If that was thrown in the picture, would that help it?

A. That would help it, but I didn't know anything about that, what you are saying.

Mr. Picco: That is all the questions I have.

/s/ E. E. SEARLES.

Received T.C.U.S. September 19, 1950.

The Tax Court of the United States

Docket No. 26127

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated February 16, 1951.

FINDINGS OF FACT AND OPINION

Petitioner, a corporation, under a "Sale and Lease Agreement," sold equipment to a partnership composed of its sole stockholders and simultaneously leased it back. The agreement gave petitioner exclusive right to lease the equipment and a first option to purchase upon dissolution of the partnership. Held, amounts paid as alleged rentals to the partnership were not deductible under section 23(a)(1)(A) of the Internal Revenue Code.

HENRY C. PERKINS, ESQ.,

For the Petitioner.

JOHN D. PICCO, ESQ.,

For the Respondent.

Respondent has determined deficiencies in excess profits tax for the years 1944 and 1945 in the amounts of \$20,537.77 and \$22,220.52, respectively.

The only issue before us is whether respondent erred in disallowing deductions taken by petitioner in 1944 and 1945 for amounts paid as rent on equip-

ment under certain "Sale and Lease Agreements" entered into with stockholders of petitioner, doing business as Equipment Associates, a partnership.

Findings of Fact

The facts which were stipulated are so found and are incorporated herein by reference.

Petitioner is a corporation, having been organized under the laws of the State of Washington on April 16, 1921. It is engaged in the business of operating warehouse terminals and storage. Its office and principal place of business is in Tacoma, Washington. Petitioner keeps its books and files its returns on the accrual basis. Its returns for the years here involved were filed with the collector of internal revenue for the district of Washington, at Tacoma.

On January 1, 1943, the outstanding capital stock of petitioner was owned by the following persons:

Shareholder	Shares
R. H. Shaffer.....	108
Samuel B. Stocking.....	72
K. M. Kennell.....	12
W. Hopkins	8
	<hr/>
Total.....	200

On October 20, 1943, R. H. Shaffer died. His shares of stock in petitioner were acquired by the surviving shareholders. On December 31, 1943, the capital stock of petitioner was held as follows:

Shareholder	Shares	% of Ownership
Samuel B. Stocking	157	78.5
K. M. Kennell	26	13
W. Hopkins	17	8.5
	<hr/> 200	<hr/> 100

During the period here involved and after the death of R. H. Shaffer, the sole officers of petitioner, who were also its sole stockholders, were as follows:

Samuel B. Stocking, President.

K. M. Kennell, Vice President-Secretary.

W. Hopkins, Treasurer.

The business of petitioner increased very rapidly and continuously from July, 1942, through 1943 and the subsequent war years. This increase was due to war business provided by the United States Army and Navy, the Russian Government and the British Government. It involved the handling of different cargoes, including supplies for the Alcan Highway and Lend-Lease cargo destined for Russia. Petitioner handled these various cargoes on a daily basis, under an arrangement with the named Governments, which was expected to and did continue for the duration of the war.

The use of certain dock equipment and machinery such as Clark-Fork type lift trucks was essential to the proper conduct of petitioner's business. Petitioner had practically no equipment of this type

and was compelled to rent it from the army under a temporary arrangement until such equipment could be acquired by petitioner. Additional equipment was also rented from local stevedoring concerns. Early in 1943, due to the increase in business and the increasing pressure from the army for the return of the rented equipment, it became apparent to the officers of petitioner that additional equipment should be acquired. This equipment was essential war material and could not be acquired except on priority. Petitioner could obtain the priority because of its essential war activities. Petitioner applied for and was granted priority to purchase new equipment in April, 1943.

On September 22, 1943, a partnership was organized by the individuals named above under the style of Equipment Associates (sometimes hereinafter referred to as the partnership). Subsequent to the death of R. H. Shaffer on October 20, 1943, decedent's interest was acquired equally by the surviving partners and the business was conducted as a partnership under the same name. The partnership agreement dated October 8, 1943, evidencing the oral agreement entered into September 22, 1943, provided in part as follows:

2. The purpose and business of said copartnership shall be primarily to furnish certain equipment for the use of Shaffer Terminals, Inc., and used in essential war work. It is understood that the finances of Shaffer Terminals, Inc., are not sufficient to justify the pur-

chase by said Shaffer Terminals, Inc., of said equipment, such as dock tractors, lift trucks, etc. Equipment Associates will purchase such equipment, hold the same for the exclusive use of Shaffer Terminals, Inc., during the duration of the present emergency, and lease said equipment to said Shaffer Terminals, Inc., at a reasonable rate of rental. When not being used by Shaffer Terminals, Inc., said equipment may, with the consent of Shaffer Terminals, Inc., be temporarily leased to others who have use for said equipment in essential war work.

* * *

6. The copartnership is authorized and empowered to purchase from Shaffer Terminals, Inc., such equipment as Shaffer Terminals, Inc., may desire to dispose of at prices to be agreed upon between the copartnership and said Shaffer Terminals, Inc.

The capital invested in Equipment Associates consisted solely of cash furnished in equal amounts by the partners. Each partner contributed \$2,500. The investment made by W. Hopkins was from his personal funds. Investments made by the other partners were in part from personal funds and in part from bank loans.

The affairs of Equipment Associates were managed by Samuel B. Stocking, for which he was paid \$200 per month, and its books of account were kept by E. A. Seaton, for which he was paid \$30 per month, both items being deductions before partners'

distribution of earnings. E. A. Seaton was also the regular bookkeeper for petitioner. Equipment Associates employed no other employees. It used the office of petitioner for which no rent or charge was paid. Petitioner and Equipment Associates kept separate books and records and there was no intermingling of the partnership and corporate funds or records. The partnership owned no other property except the terminal equipment leased to petitioner.

Subsequent to September 22, 1943, and at all times here material, petitioner obtained the necessary priorities and purchased equipment similar to that already described above. The partnership did not apply for priorities. Petitioner made these purchases on September 30, 1943; March 21, 1944, and June 16, 1945. After each purchase, petitioner transferred legal title to the equipment to the partnership, pursuant to certain "Sale and Lease Agreements" executed in October, 1943; in March, 1944, and in June, 1945.

With respect to the first purchase, petitioner ordered the equipment in September, 1943, and received delivery thereof in the same month. Petitioner sent its check dated September 30, 1943, in payment thereof, in the amount of \$9,529.44, which included the freight charges. This check cleared petitioner's bank on October 13, 1943. The partnership paid petitioner by check dated October 11, 1943. With respect to the second purchase, petitioner ordered the equipment and received delivery thereof some time before March 21, 1944. Petitioner sent its check, dated March 21, 1944, in payment

thereof, in the amount of \$10,298.60, which included the freight charges. This check cleared petitioner's bank on April 3, 1944. The partnership paid the petitioner by check dated March 27, 1944. With respect to the third purchase, petitioner ordered the equipment, and received delivery thereof, some time before June 16, 1945. Petitioner sent its check, dated June 16, 1945, in payment thereof, in the amount of \$10,319.61, which included the freight charges. This check cleared petitioner's bank on June 27, 1945. The partnership paid petitioner on July 30, 1945.

The first purchase of equipment by the partnership was paid for out of the original contributions of capital made by the partners. The second and third purchases were financed by separate loans obtained from the Puget Sound National Bank of Tacoma, secured by chattel mortgages. These loans were classified as commercial or short-term, and notes therefor were drawn on terms of 90 days.

All of the sale and lease agreements were substantially similiar in terms to the "Sale and Lease Agreement" executed October 8, 1943, differing only as to date and the amount of the sales value of the equipment. The "Sale and Lease Agreement" executed October 8, 1943, reads in part as follows:

Witnesseth: Shaffer Terminals, Inc., has heretofore purchased certain machinery and equipment described in "Exhibit A," hereto attached and made a part hereof, as if fully set forth in this paragraph.

On September 30, 1943, Shaffer Terminals,

Inc., sold and transferred said equipment to said Equipment Associates for the sum of \$9,529.44, under the following terms and conditions, to wit:

Shaffer Terminals, Inc., reserves the exclusive right to lease said equipment from Equipment Associates during the entire time of the emergency created by the existing war in which the Government of the United States of America is engaged and said Shaffer Terminals, Inc., agrees to pay to Equipment Associates a monthly rental of \$3.00 per hour of use, minimum 200 hours per month, for the use of said equipment and machinery until a different monthly rental is agreed upon by the parties hereto. [Rate reduced to \$2.75 per hour with no minimum on March 1, 1944.]

In the event Equipment Associates shall determine to dispose of any of said equipment, Shaffer Terminals, Inc., is given the first right to purchase said equipment at a price to be agreed upon by the parties hereto * * *.

It is contemplated that further equipment and machinery will be required from time to time by Shaffer Terminals, Inc., and that said equipment will be provided by said copartnership and leased by said Shaffer Terminals, Inc. * * *.

It is understood that the equipment and machinery herein referred to is necessary for the operations of Shaffer Terminals, Inc., in doing

essential war work; that the finances of said Shaffer Terminals, Inc., are not such at this time as to justify the purchase by said Shaffer Terminals, Inc., of said equipment and machinery and that the said partnership, Equipment Associates, has been organized for the purpose, among other things, of providing the necessary finances for Shaffer Terminals, Inc.

Shaffer Terminals, Inc., will at all times keep any and all of said leased property insured against fire, theft, property damage and public liability, such insurance to be payable to the parties as their interests may appear. Shaffer Terminals, Inc., will hold Equipment Associates harmless from any liability on account of any accidents which may happen to said equipment and machinery and all liability to any parties for the use thereof. Shaffer Terminals, Inc., will pay all operating costs and ordinary maintenance and repairs for said equipment and machinery and at the termination of the rental period will return said property to Equipment Associates in as good condition as when received, ordinary wear and tear excepted.

The rentals paid by petitioner to the partnership were in accord with Tacoma Terminal Tariffs filed with the Public Service Commission of the State of Washington in compliance with section 10383 of Remington's Revised Statutes of Washington. The amounts paid were as follows:

1943	\$ 6,892.50
1944	41,134.82
1945	29,434.46
1946	11,782.32
1947	900.00
<hr/>	
Total	\$90,144.10

During the period here involved no dividends were declared by petitioner. Prior to this period the last dividend was in 1942, and the first dividend after this period was in January, 1946, in the amount of \$12,000. Corporate salaries authorized by petitioner under dates of September 1, 1941, and November 1, 1943, and paid to the officers designated below during the period here involved, were as follows:

Officer	Sept. 1, 1941	Nov. 1, 1943
R. H. Shaffer	\$12,000	-----
Samuel B. Stocking	9,600	\$12,750
K. M. Kennell	4,800	9,850
W. Hopkins	4,500	6,000
<hr/>		<hr/>
Total.....	\$30,900	\$28,600

A summary of petitioner's working capital position at the end of the tax years, and on or about the dates when the equipment was acquired, follows:

Date	Cash	Accounts Receivable	Notes Payable	Accounts Payable	Social Security and Income Tax Reserves
8/31/43.....	\$ 115.72	\$120,946.06	\$15,000.00	\$27,399.19	\$23,670.46
9/30/43.....	28,683.33	134,756.42	35,000.00	37,538.50	13,293.22
12/31/43.....	19,297.28	104,345.78	32,000.00	12,317.73	.....
3/21/44.....	30,512.47	51,782.87	27,000.00	9,867.93	43,849.77
12/31/44.....	86,818.60	80,945.50	52,000.00	49,496.67	.....
6/16/45.....	63,129.76	108,473.80	7,000.00	33,168.15	20,178.05

The earned surplus on December 31, 1944, and December 31, 1945, was \$67,303.28 and \$68,922.29, respectively. This earned surplus is made up largely from cash and accounts receivable owing by the Soviet Purchasing Commission, the British Purchasing Commission, and the United States Army, Navy and Department of Agriculture.

Petitioner's cash balance on or about the dates of acquisition of the equipment was adequate to cover checks drawn in payment therefor.

The Puget Sound National Bank had made loans to petitioner during the years from 1930 to 1941 when petitioner's record was not too satisfactory. During the years 1942 to 1945 petitioner's financial statements showed additional strength and the size of the loans was increased. These loans were usually made for short terms upon assignment to the bank of accounts receivable and were primarily used to meet current expenses.

In 1943, due to the pending possibility of petitioner being unable to obtain rental equipment, officers of petitioner began considering the feasibility of purchasing new equipment. Informal discussions were had with E. E. Searles, vice president of the Puget Sound National Bank, concerning the purchase of equipment and the possibility of obtaining a loan for this purpose. No formal loan application was made by petitioner for consideration by the loan committee of the bank.

As pointed out above the initial purchase by the partnership of the equipment leased to petitioner was paid for by means of personal loans made to

the partners by the bank. Subsequent purchases were financed by loans from the bank made upon the basis of chattel mortgages and the increased earnings of the partnership.

The partnership filed income tax returns for the years 1944 to 1946, inclusive, also the period from January 1, 1947, to June 30, 1947, when it was liquidated, in which it reported gross profits, deductions and net profits as follows:

	1944	1945	1946	1/1-6/30/47
Gross Profit	\$41,468.32	\$30,568.07	\$11,725.32	\$ 912.72
*Deductions	7,183.40	8,277.91	5,135.23	1,035.79
	<hr/>	<hr/>	<hr/>	<hr/>
	\$34,284.92	\$22,290.16	\$ 6,590.09	(\$ 123.07)
Distribution				
Stocking	\$11,428.31	\$7,430.05	\$2,196.69	
Kennell	11,428.31	7,430.05	2,196.70	
Hopkins	11,428.30	7,430.06	2,196.70	

* Includes salary for S. B. Stocking of \$2,400.00 per year for 1944, 1945 and \$1,050.00 for 1946.

Of the gross profits realized by the partnership, rentals paid by petitioner accounted for all except \$333.50 in 1944 and \$1,277 in 1945.

The partnership was liquidated and dissolved as of June 30, 1947. On April 23, 1947, it transferred part of the equipment covered by the "Sale and Lease Agreements" back to petitioner for the sum of \$10,613.49, the book value of said equipment, plus sales tax of \$318.40. The remaining equipment was distributed in final liquidation on June 30, 1947, to the individual partners who transferred it to petitioner on October 27, 1947, for a total consideration of \$7,500. The book value, or depreciated value of this equipment was \$7,223.73 on December 31, 1946.

Petitioner's profits were such that it already was in the 90 per cent bracket under the excess profits tax, and no substantial benefit would have resulted from petitioner acquiring the necessary equipment. The stockholders of petitioner organized the partnership, primarily to avoid the excess profits tax and its impact on the earnings of petitioner. It was not organized for the purpose of financing the purchase of equipment which petitioner needed in its business.

Opinion

Johnson, Judge.

The issue for determination is whether amounts paid as "rent" by petitioner to a partnership composed of its sole stockholders under certain "Sale and Lease Agreements" are proper deductions in the computation of excess profits tax during the years 1944 and 1945 under section 23(a)(1)(A)¹ of the Internal Revenue Code.

¹Sec. 23. Deductions From Gross Income.

In computing net income there shall be allowed as deductions:

(a) Expenses.

(1) Trade or Business Expenses.

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including * * * rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

This issue depends for its determination upon the fundamental question of whether the transaction here involved is a recognizable sale and lease for tax purposes. Considering first the parties to the transaction, we find the lessor partnership composed of the sole stockholders of petitioner, the lessee. Such a situation bears special scrutiny. *Higgins v. Smith*, 308 U. S. 473. The president of petitioner was also manager of the partnership. The office of the partnership was the same as that of petitioner. The partnership paid no rent and hired no employees except petitioner's regular bookkeeper. The establishment of policies for both petitioner and the partnership was the responsibility of the same individuals. These circumstances, we believe, do not lend toward arm's length dealing in a transaction recognizable for tax purposes.

Petitioner asserts that the partnership was formed for the purpose of acquiring the necessary capital with which to purchase the equipment. This, however, does not impress us in view of petitioner's working capital position at the time of the various purchases which was ample to cover checks drawn on its account. Furthermore, the funds with which the partnership purchased the initial equipment were in the main obtained by bank loans to the partners whose source of repayment was the revenue earned by petitioner. It is also to be noted that the subsequent purchases of equipment by the partnership were financed by bank loans made against chattel mortgages and the increased earnings of the partnership which were the rentals paid by peti-

tioner. In actual effect it was the earning power of petitioner which formed the basis for these financial arrangements. And finally, the testimony of E. E. Searles, of the Puget Sound National Bank, although contradictory, is to the effect that petitioner would have been granted a short-term loan had it made application.

The mere fact that these payments, made by the corporation to the partnership, were labeled rent does not, in fact, make them so. They may be dividend distributions or something other than rent. *Ingle Coal Corporation v. Commissioner* (C.A., 7th Cir., 1949), 174 Fed. (2d) 569; *Limericks, Inc., v. Commissioner* (C.A., 5th Cir.), 165 Fed. (2d) 483. Nor does the fact that there may have been a legally enforceable obligation to pay, as between petitioner and the partnership, make such payments deductible as rent or otherwise under section 23(a)(1)(A) of the Internal Revenue Code. *Interstate Transit Lines*, 44 B.T.A. 957; *affd.*, 130 Fed. (2d) 136; *affd.*, 319 U.S. 590; *Deputy v. Du Pont*, 308 U.S. 488

Whether the "Sale and Lease Agreement" which gave rise to the obligation to pay "rent" is such a transaction as is recognizable for tax purposes depends, we think, upon the practical effect of the end result. These various steps were not separate, independent transactions, but integrated parts of a single plan and "in determining tax consequences we must consider the substance rather than the form of the transaction." *Ingle Coal Corporation v. Commissioner*, *supra*.

Petitioner asserts on the authority of Gregory

v. Helvering, 293 U. S. 465, that it is within the right of a taxpayer to decrease the amount of his tax liability by means within the limits of the law. This is no doubt true. However, the principle enunciated in that case, as we understand it, aside from the question of tax avoidance, is whether the transaction under scrutiny is in substance what it purports to be in form.

Here, the partnership, composed of the sole stockholders of petitioner, was formed for the purpose of purchasing from it and holding for its exclusive use the equipment required. When not being used by petitioner, but only with its consent, the equipment could be temporarily leased to others. The partnership owned nothing but the equipment purchased from petitioner and simultaneously leased back to it. Equipment Associates employed only a manager, who was also the president of petitioner, and a part-time bookkeeper regularly employed by petitioner. By these transactions petitioner, in addition to possessing the exclusive right to lease the equipment, had full control over its use as well and by exercising its first option to purchase the equipment also controlled the partnership's disposition of the equipment.

The net effect of the agreement was to strip the partnership of all incidents of ownership, vesting in it only bare legal title while control over the property remained in petitioner. Such a reservation of control contradicts a sale which presupposes that the seller loses not only title but control. *Esperson v. Commissioner* (C.A., 5th Cir.), 49 Fed. (2d) 259;

Shoenberg v. Commisisoner (C.A., 8th Cir.), 77 Fed. (2d) 446. Such command over the property marks petitioner as the real owner for income tax purposes. Commissioner v. Court Holding Co., 324 U. S. 331. As the Supreme Court stated in Higgins v. Smith, *supra*, pp. 477, 478:

* * * The Government may look at actualities and upon determination that the form employed for doing business or carrying out the challenged tax event is unreal or a sham may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation. It is command of income and its benefits which marks the real owner of property.

Nor does it make any difference that such command "may be exercised through specific retention of legal title or the creation of a new equitable but controlled interest, or the maintenance of effective benefit through the interposition of a subservient agency." *Griffiths v. Helvering*, 308 U. S. 355.

The artificiality of these transactions is further emphasized when we view the ultimate result. The partnership purchased the required equipment at the initial cost to petitioner of \$30,147.65. From October, 1943, until February, 1947, petitioner paid rent to the partnership in the amount of \$90,144.10. On April 23, 1946, the partnership sold six pieces of this equipment back to petitioner at the depreciated book value of \$10,613.49, plus sales tax of

\$318.40. The remaining pieces of equipment were distributed to the partners upon the dissolution of the partnership on June 30, 1947, and were sold to petitioner on October 27, 1947, for \$7,500. The total sum paid by petitioner to the partnership for the use and subsequent purchase of equipment initially costing \$30,147.65 was \$108,575.99. The "rental" paid by petitioner comprised the total amount of the partnership earnings, except for a small sum received in rent from others than petitioner, from which the distribution of partnership profits was made to the partners. Petitioner paid no dividends in the years 1943 to 1945, inclusive.

Upon close scrutiny, this entire plan is not, in substance, a sale and lease transaction recognizable for tax purposes and we therefore hold that the amounts paid the partnership by petitioner are not deductible as rent under section 23(a)(1)(A) of the Code.

The facts in the instant case present an even stronger case for respondent than those presented in a similar sale and lease transaction considered in *Catherine G. Armston*, 12 T. C. 539. There, a family corporation sold certain construction equipment to its major stockholder, the taxpayer, who in turn leased it back to the corporation, which paid rent for the use of the equipment. This Court held that this did not constitute a recognizable sale creating a valid obligation to pay rent. There the lessor possessed control over the use of the equipment and full right of sale, whereas in the case before us no such right existed.

Skemp v. Commissioner (C.A., 7th Cir., 1948), 168 Fed. (2d) 598; reversing 8 T. C. 415, is distinguishable from the instant case on the facts. There, ownership and control were relinquished by the donor by irrevocably divesting himself of all title and right to the property upon conveying it to an independent trustee over which the donor had no control. On these facts, the Court of Appeals held that a bona fide lease existed.

Petitioner cites Buffalo Meter Co., 10 T. C. 83, and Seminole Flavor Co., 4 T. C. 1215, which are not applicable here. In those cases there was an actual and real separation of economic interests between two independent business entities, not the creation of a subservient agency from which independence and control has been stripped as in the case before us.

Decision will be entered for the respondent.

Served February 16, 1951.

The Tax Court of the United States

Docket No. 26127

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated February 16, 1951, it is

Ordered and Decided: That there are deficiencies in excess profits tax for the years 1944 and 1945 in the amounts of \$20,537.77 and \$22,220.52, respectively.

Enter:

[Seal] /s/ LUTHER A. JOHNSON,
Judge.

Entered Feb. 19, 1951.

Served Feb. 21, 1951.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW BY UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

Comes now Shaffer Terminals, Inc., Petitioner in the above-entitled cause, and hereby petitions for a

review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States in said cause entered February 19, 1951, pursuant to the Findings of Fact and Opinion of said Tax Court promulgated February 16, 1951.

The nature of the controversy is as follows:

The Commissioner of Internal Revenue determined deficiencies in Petitioner's excess profits taxes for the years 1944 and 1945 in amounts of \$20,-537.77 and \$22,220.52, based solely on the disallowance as deductions of \$36,484.92 and \$24,633.16 paid by Petitioner in those years, respectively, to Equipment Associates, a partnership, for the rental of equipment required and used by Petitioner in the ordinary course of its business. Petitioner claims the rentals so paid as an allowable deduction in the computation of excess profits taxes for the years involved, under Internal Revenue Code, Section 23(a)(1)(A), as being "ordinary and necessary expenses paid . . . during the taxable year in carrying on" its business. The Tax Court affirmed the Commissioner upon the ground that the rental was paid to a partnership composed of Petitioner's stockholders under a Sale and Lease Agreement which did not constitute "a sale and lease transaction recognizable for tax purposes." Petitioner contends that such conclusion is erroneous as a matter of law, even upon the facts as found by the Tax Court, but contends further that the findings of the Tax Court are incomplete and in part clearly erroneous, so that complete and proper findings

necessitate a contrary conclusion as a matter of law.

The review is sought in the United States Circuit Court of Appeals for the Ninth Circuit under Internal Revenue Code, Section 1141, upon the ground and for the reason that the Petitioner's returns of the taxes in respect of which its liability for the contested deficiencies arises were made to the Collector of Internal Revenue for the District of Washington, whose office is located at Tacoma, Washington, within the Ninth Judicial Circuit of the United States.

Dated this 7th day of May, 1951.

SHAFFER TERMINALS, INC.,
Petitioner.

By /s/ SCOTT Z. HENDERSON,
/s/ HENRY C. PERKINS,
Its Attorneys.

FREDERICK D. METZGER,
HENDERSON, CARNAHAN &
THOMPSON,
METZGER, BLAIR, GARDNER
& BOLDT,
Of Counsel.

Received and filed T.C.U.S. May 9, 1951.

[Title of Tax Court and Cause.]

CLERK'S CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 24, inclusive, constitute and are all of the original papers and proceedings before the Tax Court of the United States as set forth in the "Designation of Contents of Record on Review" on file in my office as the original record in the above-entitled proceeding and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of The United States, at Washington, in the District of Columbia, this 6th day of June, 1950.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, the Tax Court of the
United States.

[Endorsed]: No. 12973. United States Court of Appeals for the Ninth Circuit. Shaffer Terminals, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed June 11, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 12973

SHAFFER TERMINALS, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF POINTS RELIED ON
BY PETITIONER

Comes now Shaffer Terminals, Inc., petitioner in the above-entitled cause, and makes the following statement of the points on which it intends to rely, namely:

I.

The rentals paid by petitioner to Equipment Associates, a partnership composed of petitioner's stockholders, for equipment needed by petitioner in its business are "trade or business expenses" and proper deductions in the computation of excess profits taxes under Section 23(a)(1)(A) of the Internal Revenue Code.

II.

The organization of the partnership, Equipment Associates, by the stockholders of petitioner was for and accomplished a business purpose. The finding and conclusion of the Tax Court that such organization was "primarily to avoid the excess profits tax" and not "for the purpose of financing equip-

ment which petitioner needed in its business," is clearly erroneous.

III.

The organization of the partnership, Equipment Associates, and the sale and lease agreements made by and between Equipment Associates and the petitioner changed the flow of economic benefits. Accordingly, the Tax Court was in error in dismissing from consideration the transfer of assets effected thereby and holding that the plan was not a "sale and lease transaction recognizable for tax purposes."

IV.

The following findings of the Tax Court were clearly erroneous:

(1) "The funds with which the partnership purchased the initial equipment were in the main obtained by bank loans to the partners, whose source of repayment was the revenue earned by petitioner." (Opinion of Tax Court, Document No. 19 of Record on Review, at page 12.)

(2) "The testimony of E. E. Searles, of the Puget Sound Bank, although contradictory, is to the effect that petitioner would have been granted a short term loan had it made application." (Opinion of Tax Court, Document No. 19 of Record on Review, at page 12.)

(3) "The net effect of the agreement was to strip the partnership of all incidents of ownership . . ." (Opinion of Tax Court, Document No. 19 of Record on Review, at page 14.)

(4) That the transactions between the partnership and petitioner were purely artificial, unreal, and a sham. (Opinion of Tax Court, Document No. 19 of Record on Review, at page 14.)

Dated at Tacoma, Washington, this 19th day of June, 1951.

/s/ HENRY C. PERKINS,

/s/ FREDERICK D. METZGER,
Attorneys for Petitioner.

[Endorsed]: Filed U.S.C.A. June 21, 1951.